



Public Hearing Date:	June 3, 2016 (continued from the May 12, 2016 hearing date)	
Hearing Body:	Board of Adjustment	
Action Requested:	Consideration of an appeal regarding an interpretation of the Director	
Location:	4 Parcels: 1476 SR179, 1535 SR179, 61 Arrow Drive, 365 Bowstring Drive (see Attachment 1, Vicinity Arial Maps)	
Parcel Number:	4 Parcels: 401-31-012, 401-31-011, 401-31-016, 401-31-020	
Applicant:	Mr. Francis J. Slavin, counsel and authorized agent for Linda Rose Robson, William B. Robson and Rio Cody Robson	
Sedona Community Plan Designation:	4 Parcels: Single-family low density (SFLD)	
Current Zoning:	4 Parcels: Residential Single-family (RS-18b)	
Adjacent Uses	Area zoning	Area land uses
Northwest:	OP	Office Building
Northeast:	RS-18b	Legal nonconforming commercial (Sacred Light of Sedona)
East:	RS-18b	Single-family residential, and Arizona Water Company arsenic removal facility
South:	RS-18b	Vacant Lot
West:	RS-18b	Single-family Residential
Report Prepared By:	Audree Juhlin, Community Development Director and Robert Pickels, City Attorney	

IMPORTANT NOTE: On May 9, 2016, the Coconino County Superior Court, Honorable Cathleen Brown-Nichols, issued an Order Temporarily staying the Appeal hearing proceedings. The Court entered this temporary stay in order to provide staff with an opportunity to draft a new staff report for the Board of Adjustment review and consideration. Therefore, you are instructed to disregard and give no consideration to the previous Staff reports dated December 29, 2015 and May 12, 2016. Instead, you are instructed to review and consider only this updated staff report.

Summary: The four properties in question are all zoned single-family residential and are believed to be used for commercial purposes. The primary property where the gallery is located (1476 SR179, tracts 41 and 42) was initially developed in the 1960's as a single-family residence with a small ancillary art gallery that allowed the property owner, who was an artist, to display and sell her wares. The Robsons purchased the home and art gallery in the early 1980s. This type of commercial use in residential zoning districts is not permitted, however, because the use existed prior to the City's incorporation and the implementation of city zoning, the art gallery is considered a legal nonconforming "grandfathered" use.

Shortly after the City's incorporation, it was determined that the retail (gallery) use had expanded beyond its legal nonconforming rights. In order to continue to operate in an expanded capacity, the Robsons sought approvals through a Conditional Use Permit (CUP) which was issued by the City of Sedona in 1992. This CUP established the conditions by which the residence and the legal nonconforming uses would be regulated. Since that approval, the retail/commercial activity has expanded beyond what was conditionally permitted in the 1992 CUP and as such, the use of the property is no longer in compliance with the CUP conditions of approval. The

residential house (1,950 sf) has been converted for commercial use resulting in the entire property being used for retail/commercial purposes; this is in violation of the single-family zoning district regulations, the nonconforming situation regulations and those conditions approved as part of the 1992 CUP. Further, the three neighboring properties owned by the Robsons and zoned as single-family residential are being used for commercial purposes. Commercial use of these three properties is in violation of the single-family zone district regulations.

As a result, on November 10, 2015, the City issued two (2) Notice of Violations (NOVs) to the Robsons directly addressing the unpermitted expansion and use of the single-family residential properties for commercial purposes; specifically:

1. For expanding commercial operations on their primary residential property at 1476 SR179 (tracts 41 and 42), using the vacant residential lot at 1535 SR179 (tract 40) for loading/unloading and storage of merchandise and "overflow" parking, using their residential properties at 61 Arrow Drive (tract 45) and 365 Bowstring Drive (tract 49) for commercial purposes including warehousing and manufacturing, and,
2. For providing food services (chilis) without approvals.

Staff is requesting that the Board of Adjustment uphold the two (2) Notice of Violations issued on November 10, 2015 requiring the subject properties to comply with all applicable codes and the conditions of approval of the 1992 CUP. The Robsons are appealing the two (2) Notice of Violations to the Board of Adjustment.

Attachments:

1. Vicinity Aerial Maps
2. November 10, 2015 Overview Letter and Notice of Violations from Director
3. 1992 CUP Staff Report
4. CUP 92-3 Conditions of Approval and June 7, 1994 Agreement between the City and the Robsons
5. Other Notice of Violations and issues
6. Land Development Code References
7. Public Comments
8. Application Documents (provided by the applicant and distributed in early December)



Introduction

The basis for this Appeal is the two (2) separate Notice of Violations (NOVs), dated November 10, 2015, issued by the Community Development Director (see Attachment 2). The supplemental memorandum provides a detailed historical account of the development of the subject property. The memorandum further attempts to outline and frame the issues for consideration by the Board of Adjustment (Board). The issues presented are many and complex in nature. This is an atypical appeal for any board of adjustment to consider, and the potential for confusion and distraction is great. In an effort to present an orderly and efficient summary of what City of Sedona staff position is relative to the issues for consideration by the Board, staff has prepared this memorandum which is intended to summarize, categorize and simplify those issues.

In the most basic terms, the purpose for this appeal is to compare the existing nonconforming uses on the Applicant's property against the authorized legal nonconforming uses identified in a CUP issued in 1992; and, to determine if any of the expanded uses beyond those provided for in the 1992 CUP may now be properly allowed.

I. Board of Adjustment Powers and Duties

The powers and duties of the City of Sedona Board include, but are not limited to, hearing, reviewing, and acting on appeals of the decisions of the Director of Community Development regarding an interpretation of the Sedona Land Development Code, LDC 304.01(B). Such a review consists of appeals in which it is alleged there is an error in **an order, requirement or decision made by the zoning administrator** in the enforcement of a zoning ordinance adopted pursuant to A.R.S. § 9-462.06. (Emphasis added). The City of Sedona Board of Adjustment's Operating Rules and Procedures (Rules), adopted by the Sedona City Council as Resolution 1994-13 and Ordinance 88-23 on June 14, 1994, establish time limits for appeals which must be filed within sixty (60) days after **notice of an adverse decision is given** by the Department of Community Development. (Emphasis added).

Per The City of Sedona Board of Adjustment's Operating Rules and Procedures (Rules), Article 11 (Procedures for Appeals) before acting on an Appeal for interpretation, the Board shall consider:

1. A statement by the Appellant describing the way it is alleged the Ordinance should be interpreted, together with diagrams and charts illustrating both the erroneous and the proper application of the map or test provisions of the Ordinance.
2. A statement by the Director giving reasons his/her interpretations of the Zoning Ordinance.
3. The facts and statements filed in the application.
4. The testimony presented at the Public Hearing.
5. The Staff's report on the Appeal, and
6. The Board's independent investigation of the language of the Ordinance and of related Ordinances bearing thereon.

The decision of the Board shall take into account the following conditions:

1. That there is reasonable doubt or difference of interpretation as to specific intent of the regulations or map;
2. That the resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

II. Related City of Sedona Actions

For purposes of simplification, the related actions for consideration in conjunction with this appeal are:

1. The approval of a Conditional Use Permit (CUP) 92-3 on September 15, 1992 by the City of Sedona Planning & Zoning Commission, along with the associated conditions, including the designation of "Alternate Site Plan #2" to reflect the then existing physical improvements (see Attachments 3 and 4);
2. A June 7, 1994 agreement between the City of Sedona and the Robsons modifying certain conditions of CUP 92-3 (see Attachment 4);
3. The 1994 adoption of the Sedona Land Development Code (effective January 1, 1995) which eliminated the authority of the Planning & Zoning Commission to approve any expansion of a nonconforming use through a CUP;
4. The August 31, 2011 NOV and suspension of CUP 92-3 (see Attachment 5);
5. The October 8, 2014 NOV, which was reinforced in the November 10, 2015 NOVs (see Attachments 5 and 2)

III. City of Sedona's Position on O'Brien 2011/2012 Communication Exchange

Much of what is presented in the Applicant's appeal application relates to circumstances that developed over a period of several months toward the end of 2011 and into early 2012. The Applicant's supplemental memorandum (previously distributed in early December 2015) characterizes a series of communications that occurred between then Director of Community Development, John O'Brien, and the Applicant as a "decision" which is now appealable to the Board. However, it is the position of City staff that those circumstances did not involve *"an order, requirement or decision made by the zoning administrator"* at that time, Mr. O'Brien. Regardless, any appeal of then Director O'Brien's actions would have had to be taken within sixty (60) days after notice of an adverse decision was given, pursuant to the Rules. Assuming that an appealable decision was rendered in 2011 or 2012, the time for appeal of such a decision has passed.

In order to avoid what could be a significant distraction to the Board at the time of hearing this appeal, it is necessary to address the above-referenced activity.

In December of 2011, following years of ongoing code compliance issues that addressed expansions beyond what was authorized in CUP 92-3, Mr. O'Brien sent an email communication to Rio Robson in which Mr. O'Brien outlined a process by which a compromise might be reached in regard to several outstanding code compliance issues. Shortly thereafter, Mr. Robson acknowledged receiving the O'Brien email and indicated a willingness to engage in a dialogue sometime after that Christmas. Because no further activity in the form of an "order, requirement or decision" of Mr. O'Brien as the Director occurred, and the fact that nothing from that original exchange influenced any aspect of Director Juhlin's the decision to issue the 2015 Notice of Violations currently at issue, it is the City's position that any reference to the December, 2011 email and subsequent acknowledgement thereof can serve no purpose other than to distract the Board from reviewing what is relevant in relation to the NOV's.

Assuming that the Board appreciates the City's position regarding the O'Brien email exchange and can set that aside, the balance of this document will outline those issues in the application that staff believes are relevant for consideration by the Board and those issues that staff believes are not relevant. Regardless, it is important to understand that none of the decisions being appealed in this process were made in reliance on any actions of John O'Brien.

IV. Purpose of Staff Report

As previously indicated, the Board hears appeals “...in which it is alleged that there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance...” A.R.S. § 9-462.06. The Operating Rules and Procedures for the Board of Adjustment adopted by the Sedona City Council as Ordinance 88-23, requires that City staff provide a report on the appeal to the Board as part of the Board’s basis for action. This report attempts to outline those issues which staff believes are relevant for appeal and determination by the Board from those that are not.

V. Issues Staff Believes Are Not Relevant for Board of Adjustment Review

Beginning on page 28, section 3, under subsection 3.A of the Applicant’s Appeal letter, five (5) separate issues were outlined, four (4) of which revolve around the basic premise that then Director John O’Brien made a “decision” on or about December 21, 2011, that subsequently impacted the development and expanded use of the Applicant’s properties. In anticipation of the significant reliance that the Applicant has placed on that alleged decision, staff feels it is critical to distinguish it as an issue separate and apart from the NOV’s. To do otherwise would risk compromising the charge of the Board and causing unnecessary delays in the review of issues within its purview.

The first issue (3.A.1) presented is whether Mr. O’Brien, as the Community Development Director, had the legal authority to interpret, enforce and determine compliance with CUP 92-3, Alternative Site Plan #2, and subsequent site plan and permit approvals issued by the City to Son Silver West. There has not been a contradictory interpretation of the Community Development Director’s authority as described in issue 3.A.1. The City agrees with such an interpretation of the Director’s authority and, therefore, we do not believe that this is an issue subject to review by the Board.

The remaining issues in section 3.A all relate to the aforementioned “decision” by Mr. O’Brien. Again, the City does not acknowledge that the December 21, 2011 communication from Mr. O’Brien was a “decision” upon which any of the issues identified in the NOV’s were dependent. Rather, our characterization of both the December 21, 2011 communication from Mr. O’Brien and subsequent communication (specifically Rio Robson’s December 23, 2011 acknowledgement of Mr. O’Brien’s December 21, 2011 communication) between Mr. O’Brien and the Applicant is best described as an invitation to participate in dialogue seeking resolution of the longstanding issues. There was no conclusion reached in any of these communications and no decision from the Director in the NOV’s was related to these communications. In light of the fact that the NOV’s do not consider the existence of any 2011 decision, the 2015 NOV’s should not be challenged to the Board on those grounds.

Moreover, it is not Mr. O’Brien’s decision (assuming that one existed) that is subject to appeal as outlined above. It is the current Director’s decision, as it pertains to the 2015 NOV’s, which is the subject of the appeal. Section 3.B.2 purports to challenge Corrective Action C.1 of the NOV. Staff’s interpretation of this issue is that the Applicant is asking the Board to consider its actions as being exhaustive in relation to the Applicant’s ability to comply with the unlawful parking problem. It is our opinion that this offered justification is not relevant to any decision made by the Director in the 2015 NOV.

Sections 3.B.8 – 3.B.11 purport to challenge Corrective Actions D.3 – D.6 of the NOV. Significantly, these challenges all rely on an alleged “approval” by then Director John O’Brien of an expanded use of the 1992 CUP. For the reasons outlined more specifically above, the City does not acknowledge that any such approval occurred. Further, no significance was given to any communication between the Applicant and Mr. O’Brien in relation to the November 10, 2015 NOV.

Section 3.D.1 challenges the revocation of Son Silver West’s business license. Because the Community Development Director (Director) plays no role in the issuance or revocation of business licenses for the City of

Sedona, this matter has no relevance to the Board.

Section 3.F.1 relates to the persuasive nature of documentation presented to the Director subsequent to the 2015 NOV. While such documentation may be appropriately presented to the Board for consideration at the hearing, the conclusion being suggested by staff is within the discretion of the Board after hearing evidence, irrespective of any specific request by the Applicant. Moreover, as a specific issue this is not a decision independent of the NOV for which appeal may be sought to the Board.

Section 3.F.2 asks the Board to engage in a legal analysis and draw legal conclusions that, in staff's opinion, are beyond the scope of its authority and may be more appropriately challenged in an alternative forum.

VI. Issues Staff Believes Are Relevant for Board of Adjustment Review

Section 3.B does present several issues for which an administrative review by the Board is appropriate.

Section 3.B.1 purports to challenge Corrective Action A.5 of the NOV. Staff's interpretation of what is being asked is whether the permitted shed at issue can be used as a "chapel" without any additional permit being issued? Framed in this manner, we believe that this is an appropriate issue for the Board to review.

Section 3.B.3 purports to challenge Corrective Action C.2 of the NOV. Staff's interpretation of what is being asked is whether the approval of the relocation and construction of a commercial driveway necessarily authorized the ability to use the area for all commercial purposes? Framed in this manner, we believe that this is an appropriate issue for the Board to review.

Section 3.B.4 purports to challenge Corrective Action D.1 of the NOV. Although we believe that all evidence available supports a conclusion that the allowable outdoor retail space was never authorized to exceed 5,000 sf, this appears to be an appropriate issue for the Board to review.

Section 3.B.5 purports to challenge Corrective Action D.2 of the NOV. Although we believe that nothing in Condition No. 1 to CUP 92-3 or Alternative Site Plan #2 is persuasive to the use of retail space exceeding 2,500 sf in enclosed buildings, this appears to be an appropriate issue for the Board to review.

Section 3.B.6 purports to challenge Corrective Action D.2 of the NOV. Although we believe that there is no evidence to support authorization to use the permitted storage shed for commercial purposes, this appears to be an appropriate issue for the Board to review.

Section 3.B.7 purports to challenge Corrective Action D.2 of the NOV. This appears to be an appropriate issue for the Board to review.

Section 3.B.12 purports to challenge Corrective Action D.6 of the NOV. It is our opinion that there is no limitation on the square footage of shade structures erected in outdoor retail display areas on the Son Silver West property, so long as each shade structure is properly permitted. If the question is whether such unlimited shade structures may exist without the appropriate permits, then that would be a proper issue for the Board to review. Otherwise, it is staff's position that this issue may not be properly framed.

Section 3.B.13 purports to challenge Corrective Action D.6 of the NOV. The question of whether or not a permit is required for the fence and masonry wall appear appropriate for consideration by the Board to review.

Section 3.C.1 seeks confirmation that the preparation, roasting, display and vending of chilies on the Son Silver West Property are permitted as a legal nonconforming use. Although the necessary action by the City of Sedona Planning and Zoning Commission has not been sought in relation to this issue, it is nevertheless presented for

review.

Section 3.E.1 challenges the authority to revoke CUP 92-3 for violations occurring on separate tracts of land. Staff is of the opinion that such authority only exists when such violations are related to the principle tracts, which in this case are Tract 41 and 42. If the challenge is that no such violations on adjacent tracts impact Tract 41 or 42, then that would be properly framed as an issue for the Board to review.

VII. Conclusion

It is critically important that the focus of the review remain on what was conditionally allowed in 1992 as a legal, nonconforming situation through the CUP then issued; what additional nonconforming uses now exist on the Applicant's property; and, what, if any, of those additional nonconforming uses are legally authorized. Beyond that, it is the opinion of staff that no other issues are appropriate for review, discussion or decision through this Appeal application.

Appeal Staff Report – Supplemental
AP15-02 (Appeal)
Son Silver West

The following is intended to provide the Board with the history of the subject properties, as well as greater detail on those points presented in the appeal application.

Background

Son Silver West Gallery Inc. (SSW) is considered a legal nonconforming or commonly referred to as a “grandfathered” use. Although a single-family residential lot, the subject property (1476 SR 179, parcel #401-31-012A) has historically been used for small retail purposes. The original property owners lived in their home on site and sometime in the 1960s opened a small art gallery selling artwork and pottery on their residential property. According to then Director Tom Shaffers’ February 5, 1991 notes, in and around 1960, an art gallery known as “La Galleria” was established as part of the property owner’s single-family home located at 1476 SR79. At that time, the property, which was subject to the jurisdiction of Coconino County, had no zoning designations. In the absence of zoning, there were no legally binding regulations or standards administered by the ruling governmental entity that would preclude the use. Coconino County established zoning in 1964. This property, together with adjacent properties in the Broken Arrow subdivision, was placed in the RS-1800 zone; a zone for single-family residential uses with an 18,000 sf minimum lot size.

Having preceded zoning, the use of the property for retail purposes is legitimately allowed to continue as a legal nonconforming use commonly referred to as “grandfathered”. Nonconforming uses are permitted by law to continue in an unrestricted manner so long as they do not expand or change from their original characteristics established at the time they were deemed legal nonconforming.

In many jurisdictions, such as the City of Sedona, expansion and/or change to another nonconforming use requires compliance with applicable zoning regulations. Since 1964 and while the property was subject to Coconino county regulations, several structural additions were made to the property. These additions included the construction of a pottery shop and kiln building and workshop and storage space. In 1981, the property ownership changed. The new owners, Mr. William B. Robson and Mrs. Linda Rose Robson have with time changed the site and characteristics of retail activities on the site. In 1991, Director Shaffer determined that the site no longer was solely used for the sale of artwork and pottery. It was noted that while these items were still being carried, other retail goods were also introduced. Director Shaffer indicated that part of the changes included the addition of a 5,000 sf area used for outside retail display purposes. The owners, Mr. and Mrs. Robson contended at that time the historic use of the property included this outside display area and should be considered as an integral part of the property’s nonconforming use characteristics. However, Director Shaffer indicated that the City did not agree with the Robsons’ claim.

According to Director Shaffer, Coconino County Assessors records indicated that the display area portion of the property was assessed as vacant land in 1986. The Coconino County Planning Department also indicated that the parcel was not being utilized for display purposes in May of 1989, after the City’s incorporation. Therefore, the City of Sedona determined that the outdoor display area was a new addition and not part of the legal nonconforming use; this determination resulted in the issuance of a zoning violation to the Robsons for expansion of a nonconforming use (the art gallery) without compliance with applicable City requirements.

Director Shaffer provided the Robsons with two options for administrative relief as an alternative to litigate code enforcement action to resolve the differences. One option was to submit a CUP application for consideration by the Planning and Zoning Commission (P&Z) as the City’s Interim Zoning Ordinance at that time allowed for the expansion of a legal nonconforming use with the approval of a CUP. The other option for administrative relief was to change the zoning of the property from single-family residential to a commercial

classification more consistent with its actual use together with a CUP to address the outside sales and display area in accordance with the Interim Zoning Ordinance. The Robsons chose to proceed with a CUP application which was approved by P&Z on September 15, 1992 subject to conditions of approval.

The Robsons first submitted an application to change the zoning in December 1990. This was scheduled for a public hearing with the Planning and Zoning Commission (P&Z) on February 5, 1991. However, the Robsons withdrew the application on February 5, 1991 prior to the public hearing. Subsequently, the Robsons filed a CUP application on February 7, 1991. P&Z conducted a public hearing on this CUP on March 5, 1991, at which time the application was continued to March 19, 1991. The Robsons withdrew this CUP application on March 19, 1991 prior to the public hearing. Approximately one year later, on March 11, 1992, the Robsons filed a new CUP application. This application was ultimately approved by P&Z on September 15, 1992 subject to conditions of approval. This is the CUP that is referred to in this report as CUP 92-3.

The CUP 92-3 staff report provided specific conditions of approval (see Attachment 4). The first condition of approval states that the “uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992 and as approved by the Planning and Zoning Commission (alternate size plan #2). The staff report also listed the below site characteristics at the time of the CUP consideration. With the approval of the CUP, any changes to the site characteristics or the addition of other nonconforming land uses would require additional approvals from the City.

The following are the conditions existing at the time of approval of CUP 92-3. Any expansion or changes to these conditions requires approval from the City.

- 0.83 acres
- 2,250 sf of retail space in enclosed buildings
- 5,000 sf of outside retail display area
- 1,950 sf of single-family dwelling
- 1,300 sf pottery shop with kiln
- 590 sf of storage space
- 750 sf workshop
- Sculpture
- 2 freestanding signs

In 1994, the City of Sedona adopted the Land Development Code (LDC) which became effective on January 1, 1995. The LDC changed the nonconforming use section to no longer allow the expansion of legal nonconforming uses through the approval of a CUP. As outlined in the LDC, a legal nonconforming use which was lawful prior to the adoption of the LDC but is unlawful by the use regulations for the zoning district, may continue only in the manner and to the extent that it existed at the time of the adoption of the Land Development Code. Based on Section 1204 (Nonconforming Uses) of the LDC, a legal nonconforming use cannot expand unless the expansion conforms to the regulations specified for the zoning district in which it is located. When a nonconforming use occupies a building, expanding the use into additional buildings or land areas is prohibited. Therefore, any additional expansion of Son Silver West after CUP 92-3 would not be permitted and the property owner would not be able to obtain an amendment to CUP 92-3. Furthermore, CUP 92-3 only regulates 1476 SR179 (Tracts 41 and 42). The other three residential properties identified in the 2015 NOV's were not included in CUP 92-3, were never approved for any use other than single-family residential and are subject to all applicable regulations as identified in the RS-18b zoning designation.

Ongoing Code Violation/Compliance History

The City of Sedona's code enforcement policy is primarily reactionary in nature. When a complaint is received, city staff responds accordingly by investigating the alleged violation, determining if a violation exists, and

notifying those parties responsible of the violation and remedies to achieve compliance if substantiated. The City seeks voluntary compliance first and as a last resort, will initiate formal code enforcement actions. In most code violation cases, the City is able to successfully resolve code violations by working with the property/business owners.

Since the City incorporated in 1988, the owners of Son Silver West have chronically violated zoning and building codes, and the City has repeatedly worked with the Robsons to bring the property back into compliance. In the case of Son Silver West, the process to correct code violations through voluntary compliance has spanned months and even years, and once the property was determined to be back in compliance, new violations would be discovered and staff would again begin working with the Robsons to achieve code compliance. Further, it is important to note that aside from CUP 92-3, the Robsons have sought remedies in the past through formal applications, but prior to the public hearing the Robsons have withdrawn those applications.

As mentioned above, while the City has been able to achieve voluntary compliance in the past, unfortunately, the City was not successful in achieving voluntary compliance for the most recent code violations identified in 2014 and 2015 which resulted the October 8, 2014 NOV and the two (2) NOVs issued on November 10, 2015.

The following provides a snapshot of Son Silver West's history of making physical improvements and expanding their operations without proper permits or approvals. The following list is not intended to be all inclusive and may not include all incidents and violations related to this site, but is intended to demonstrate that the Robsons have a long history of code violations. The specific NOVs listed in the following bulleted items are included in Attachment 5.

- Violation: installing two (2) signs without sign permits. In 1986, Coconino County issued a violation letter to Son Silver West (SSW) for adding two additional signs beyond the two approved without approvals.
- Violation: constructing two (2) structures without a valid building permit. In 1992, staff discovered that two structures were constructed without building permits this resulted in the submittal of two "after-the-fact" building permits (#B2039 and #B2040).
- Concern: compliance with CUP 92-3 conditions. In February of 1993, a letter was issued by the City to the Robsons expressing concern that no progress was being made toward compliance with CUP 92-3 conditions of approval.
- Violation: constructing a structure without a valid building permit. In July of 1993, an "after-the-fact" building permit (#B2523) was submitted for constructing a storage shed on 61 Arrow Drive without approval (now referred to as the Chapel).
- Violation: commencing construction work without a building permit. In June 1994, building permit (#B2943) was issued for an arbor and covered patios (area between existing outdoor sales area and existing parking lot), however, prior to receiving this building permit, construction work began prior to the issuance of a building permit.
- Violation: site improvements required as part of CUP 92-3 were not completed by deadlines established as part of the CUP approval. In June 1994, an agreement was made between the City and the Robsons because site improvements were not being completed within the given timeframe provided in the CUP 92-3 conditions of approval.
- Violation: commercial use of a single-family residentially zoned property. In September 1994, the City received a complaint that the 61 Arrow Drive property was being used for commercial purposes including inventory storage, employee parking, and deliveries. As part of this code compliance investigation, city staff noted that berming required by CUP 92-3 did not meet code requirements.
- Violation: noncompliance with CUP 92-3. In February 1995, a letter was issued by the City to the Robsons stating that the removal of the mercury vapor lights and SR179 improvements were not completed as required by CUP 92-3 approval.

- Concern: compliance with CUP 92-3. In May 1995 a letter from the City was issued stating that if improvements to SR179 were not completed by July 1995, the Robsons would be in violation of CUP 92-3. As part of the review of the CUP application, concerns were expressed by ADOT regarding the safety of the left turn movement from northbound SR179 into the SSW property. Therefore, one of the conditions was that the applicant construct highway improvements to address ADOT's concern. The original condition required this work to be completed within one year of approval, September 15, 1993. The file shows ongoing communication between SSW, ADOT and the City of Sedona regarding the status of these improvements through at least 1995.
- Violation: construction work performed as approved by ADOT. Although the Robsons started the highway improvement construction, in November 1995, ADOT sent a letter to the Robsons stating that the approved plans were not being adhered to during construction work and corrections were needed.
 - pavement encroached into drainage way creating a potential hazard
 - pavement thickness was 2.5 inches and 4 inches was required
 - contractor did not sawcut the edge of the existing pavement as required
 - one inch lip where new pavement presented a hazard
 - construction did not meet safety standards
 - parking lot construction was supposed to eliminate the problem of parking in right-of-way
 - ADOT provided the Robsons with 30 days to address deficiencies
- Violation: work not completed to address deficiencies identified by ADOT in November 1995. In January 1996, ADOT informed the Robsons that because of work deficiencies that had not been corrected, ADOT would complete the work (identified in the above bullet) and bill the Robsons.
- Violation: construction of structures without valid building permits, expansion of uses, required conditions of approval removed, use of residential properties for commercial purposes, ingress/egress created without ADOT approvals, storage of material, creating a commercial parking lot with approvals, creating a driveway cut/grading without valid ADOT permits. In January 2006, the City issued a NOV and Suspension of CUP notice related to various code violations identified on the gallery location (Tracts 41 and 42), commercial use of residential vacant property at 1535 SR179 (Tract 40), and commercial use of residential property at 61 Arrow Drive (Tract 45). Specifically, the violations included:
 - Addition built on to a storage shed located along the southwest property lines without valid building permit (Tracts 41 and 42)
 - A storage rack system approx. 15 ft high by 12 ft long adjacent to southern storage building was building without a valid building permit (Tracts 41 and 42)
 - An information timeshare booth for off-site resort operation was added without proper approvals (Tracts 41 and 42)
 - A section of required screening/landscaping along the south end of the parking lot area was removed (Tracts 41 and 42)
 - Commercial outdoor storage added on residential vacant lot (Tract 40)
 - Use of residential vacant lot for the storage and parking of commercial vehicles and trailers (Tract 40)
 - Prohibited ingress/egress to a commercial use through an undeveloped residential property
 - Creating public access for customer parking on the residential vacant lot (Tract 40)
 - Creating driveway cut and grading without required permits (Tract 40)
 - Use of single-family residential property at 61 Arrow Drive (Tract 45) for employee parking
 - Storage of trailer at 61 Arrow Drive without proper screening (Tract 45)
 - Informed the Robsons that the 1,950 sf home must remain as a single-family use and cannot be converted to office or storage use. To do so will be in violation of CUP 92-3 conditions of approval (Tracts 41 and 42)
 - Storage of black plastic bags and piles of packing material located behind the storage racks must be cleaned up and packing material and bags disposed of in a proper manner (Tracts 41 and 42)

- Violation: amendment to January 11, 2006 NOV and Suspension notice. In February 2006, the City issued an amendment to the January NOV stating the requirement to reinstall a solid screen wall to extend the full length of the southern property boundary of the parking lot area, remove the portable toilet, remove the timeshare information booth and remove the nonpermitted addition to the southern storage shed and remove the storage rack system. The letter also reminds the Robsons *"that your conditional use permit has specific conditions of approval with which you must comply. You are not allowed to add uses, add structures, remove required screening, or to commence any other such activities without first amending your use permit or by obtaining approval from the City of Sedona. Your statement to us that you need to expand your business is irrelevant in regard to your CUP conditions of approval. Your failure to address the above stated actions by the stated dates will result in any legal enforcement actions allowed by law."*
- Violation: commercial use of a single-family residentially zoned property. In May 2011, the City issued a letter to the Robsons regarding the illegal use of Tract 40 (1535 SR179) for parking and outside sales, display and storage of merchandise and equipment.
- Violation: commercial use of a single-family residentially zoned property. In May 2011, the City issued a letter to the Robsons regarding paving and creating parking spaces on Tract 40 (1535 SR179) without proper approvals.
- Violation: constructing structure without a valid building permit and expanding the commercial use. In August 2011, the City issued a NOV and suspension notice for CUP 92-3 for violation of CUP 92-3 conditions of approval, construction of structures without permits, and violations related to the three neighboring single-family properties also owned by the Robsons. Specifically, the NOV stated that uses and physical improvements (shade structures, fence) could not exceed those as characterized in the 1992 CUP staff report, coffee shop must cease operations, and unpermitted structures be removed by October 1, 2011, and that 61 Arrow Drive, 365 Bowstring, and 1535 SR179 cannot be used for commercial purposes.
- Violation: constructing a fence without a valid building permit. In September 2011, an after-the-fact building permit (#B11594) application was submitted for the front fence.
- Violation: utilization of a sign walker without a valid sign walker permit. In October 2011, the Robsons were notified that it was a violation of City Code to use a sign walker advertising Son Silver West in ADOT right-of-way without a valid sign walker permit from the City and a right-of-way permit from ADOT.
- Concern: operating a frontend loader to transport commercial merchandise between residential properties to gallery site. In September 2014, a complaint was received and code enforcement follow-up was conducted regarding the use of a frontend loader being operated by SSW employees to transport merchandise between the gallery at 1476 SR179 and the 61 Arrow Drive residence.
- Violation: commercial use of a single-family residentially zoned property. In October 2014, a complaint was received and a NOV was issued for use of 61 Arrow Drive, 365 Bowstring Drive and 1535 SR179 for commercial purposes.
- Enforcement Actions Suspended: In May 2015, all code enforcement actions were suspended pending the outcome of a Community Plan major amendment application and rezoning application submittal to address the existing violations known at that time. As a result of these applications, additional violations were identified based on the information provided as part of the application review and consideration process. The violations expanded to include all four residential properties; the three (Tracts 40, 45, and 49) residential properties not associated with CUP 92-3 were in violation of the single-family residential zoning district regulations (commercial use) and the expansion of the home/gallery on the fourth property (Tracts 41 and 42).
- Enforcement Actions Reinstated: In August 2015, SSW withdrew the Community Plan and rezoning applications. This resulted in the City resuming enforcement actions to address existing violations known at that time.

- Violation: use of residential properties for commercial purposes and expansion beyond approved CUP 92-3 conditions.
 - On September 8, 2015, a NOV was drafted and a meeting with the Robsons and their legal counsel was conducted. At the conclusion of that meeting, it was mutually agreed to suspend further and more formal code enforcement actions until legal counsel for the Robsons had the opportunity to prepare a legal opinion of the concerns discussed at this meeting.
 - In response, legal counsel submitted a memorandum to the City on September 22, 2015 detailing multiple findings and opinions. As a result, City staff conducted a thorough analysis of this memorandum and concluded that while the document and attachments provided a detailed overview of the property's history, it did not provide substantive proof of formal approvals supporting existing conditions relative to the identified alleged Code violations.
 - Code enforcement actions were reinstated in November 2015.
 - On November 10, 2015, two (2) NOVs were issued; 1) for expanding their commercial operations on their primary property at 1476 SR179 (Tracts 41 and 42), using the vacant lot at 1535 SR179 (Tract 40) for loading/unloading and storage of merchandise and "over-flow" parking, using their residential properties at 61 Arrow Drive (Tract 45) and 365 Bowstring Drive (Tract 49) for commercial purposes including warehousing and manufacturing, and 2) for providing food services without approvals.

City staff has repeatedly informed the Robsons that it is necessary to seek approvals through a formal approval process prior to constructing new structures, expanding or changing their business beyond its conditionally allowed use or to use the three other neighboring residential properties for commercial purposes. Per Section 1204 of the Land Development Code, a legal nonconforming use cannot expand unless the expansion is in conformance with all applicable Codes. Because commercial activities are not allowed in the RS-18b single-family zoning district, any expansion beyond what is conditionally approved is in violation of the Land Development Code, Article 6 (District Regulations) Section 605 (RS-18b Single-Family Residential District) and Article 12 (Nonconforming Situations) Section 1204 (Nonconforming Uses). While the RS-18b zoning district does have provisions for home occupation uses as set forth in Article 9 (Development Standards) Section 915 (Home Occupation Uses) of the Land Development Code, the current use of these properties is not in conformance with and far exceeds these regulations (see Attachment 6).

The specific violations identified in the November 10, 2015 Notice of Violations are as follows:

61 Arrow Drive (Tract 45) – residential property:

- Commercial activities are not permitted in the RS-18b single-family zoning district.
 - Employee parking
 - Shipping/Receiving
 - Manufacturing/Welding
 - Shed turned into the "Chapel" and included as part of the 1476 SR179 conditionally permitted property
- Home Occupation – Mrs. Robson's office space in the back (must live on site for office)

365 Bowstring Drive (Tract 49) – residential property:

- Commercial activities are not permitted in the RS-18b single-family zoning district.
 - Employee parking
 - Warehousing and manufacturing

1476 SR179 Built Parcel (Tracts 41 and 42) – conditionally permitted commercial activity on residential property:

- Expansion of outdoor retail space – from 5,000 sf in 1992 to approximately 14,000 sf currently
- Expansion of indoor retail space - CUP 92-3 was for live/work space approved for 2,250 sf of retail space and 1,950 sf for the business/property owner's residence. The home is no longer utilized as a single-family dwelling unit in any capacity and has been converted to retail/commercial office space
- Two (2) structures approved through after-the-fact building permits were approved as sheds for storage space. These two (2) sheds were subsequently converted to indoor retail space. This is an expansion in excess of the conditionally approved 2,250 sf of indoor retail space
- Expansion also includes the use of a structure approved through an after-the-fact building permit for a shed for storage purposes related to the 61 Arrow Drive property (Tract 45). At some point after approval of the storage shed, it was converted to a "Chapel" and was sectioned off from the 61 Arrow Drive single-family residential property and included as additional indoor retail space in excess of the conditionally approved 2,250 sf.
- An unpermitted fence was installed along the back side of the property and an unpermitted stucco wall was installed around the "Chapel". The stucco wall crosses the 1476 SR179 (Tracts 41 and 42) and 61 Arrow Drive (Tract 45) property lines.
- Outdoor display areas do not meet screening requirements. The screening may have met codes in the past, however, the outdoor display areas no longer meet screening requirements.
- Outdoor lighting does not meet lighting requirements. The outdoor lighting may have met codes in the past, however, the outdoor lighting no longer meet lighting requirements.
- Welding/manufacturing activities not included as an approved use in CUP 92-3.
- Operating food service (roasting, displaying and vending chilis) without Coconino County Health Department approvals. Food service activity of any kind was not included in CUP 92-3.

1535 SR179 (Tract 40) Vacant Parcel – residential property:

- Overflow parking for customers and employees
- Expansion of commercial merchandise into this area, storage and display
- Loading/unloading of merchandise

Site Characteristics Conditionally Approved vs. Existing Characteristics

The uses and physical improvements listed in CUP 92-3 staff report (see Attachment 3) are as follows:

Approved as part of CUP 92-3

- 2,250 sf of retail space in enclosed buildings
- 5,000 sf of outside retail display area
- 1,950 sf single-family dwelling
- 1,300 sf pottery shop with kiln
- 590 sf of storage space
- 750 sf workshop
- Sculpture
- 2 free standing signs
- Building coverage at approximately 17%
- Parking located between gallery and SR179 (*This was later modified to the south-side of the property to address SR179 improvements*)

Providing a comparison of what was approved through CUP 92-3 and what is existing on site is challenging as a result of unpermitted expansions and additions. Therefore, this analysis is solely completed by utilizing

information submitted by the Robsons in 2015 as part of their Community Plan Major Amendment and Zone Change applications. Requests made by City staff to document existing conditions (e.g. photos) were denied by the Robsons; requests to conduct a complete inspection of the two residential properties at 365 Bowstring Drive (Tract 49) and 61 Arrow Drive (Tract 45) were also denied. It is staff's understanding that what was presented in the 2015 Community Plan Amendment and Zone change applications is most likely a good representation of what is currently on site, but actual conditions have not been verified by staff.

The following table attempts to compare CUP 92-3 approvals with those existing conditions as presented by the Robsons. Because the use of the property and various structures have changed over time, it was not possible to conduct a linear analysis. However, what this table does demonstrate is that the business has clearly expanded beyond what was approved as part of CUP 92-3.

1992 Approved	Current Conditions, based on the Robsons information submitted with the proposed 2015 Community Plan Amendment and Zone Change Applications (Withdrawn)
2,250 sf retail space in enclosed building	5,630 sf designated as "Sales/Open to Public", including Buildings A (<i>southern-most shed</i>), B-1 (<i>half of second-most southern shed</i>), C (<i>portion of building closest to 61 Arrow Drive property</i>), G (<i>front portion of main building</i>), H (<i>northern-most building</i>), I (<i>Chapel, located on 61 Arrow</i>)
5,000 sf outdoor display	15,975 sf, includes all areas of the lot not occupied by buildings or parking, but does not appear to include any area at 61 Arrow Drive, except the portion of that parcel associated as part of the "Chapel".
1,950 sf single-family dwelling	0 sf area shown for the house on the 1992 approved plan, shown as Building C (483 sf, Sales/Open to Public) and Building E (1,437 sf, No Sales/No Public), total of 1,920 square feet
1,300 sf pottery shop with kiln (<i>Location not specified on approved 1992 site plan</i>)	306 sf (<i>assumed location, Building F, No Sales/No Public</i>)
590 sf storage (<i>Location not specified on approved 1992 site plan</i>)	288 sf (<i>assumed location, Building D, No Sales/No Public</i>)
750 sf workshop (<i>Building specified as "Shop"</i>)	250 sf (<i>Building B-2, No Sales/No Public</i>); Remainder of building shown on 1992 site plan as shop is B-1, included under the sales/open to public calculation/retail space, at 245 sf.
Sculpture (to be relocated) Location shown between main building and State Route 179	Location unknown, sculpture not specified
2 freestanding signs, unlit, wood construction	2 existing signs, wood construction, in same general locations, at least 1 sign appears to be lit
17 space parking lot	18 space parking lot, plus whatever they create by parking in drive aisles/vacant lot
Screening using wooden fences, living and dead ocotillo cactus	Screening using rock and wrought iron fence
17% Building lot coverage	22% Building lot coverage (<i>7,911 sf/36,000 sf lot</i>)
Parking located between gallery and SR179	1992 approved plans show a drive aisle between the gallery and SR179. This was not approved by ADOT and, as a business, this situation would not warrant three curb cuts. The area previously shown as a drive aisle is now used as outdoor display. There is no proof that this was ever approved as additional outdoor display. It could have been approved as a reconfiguration of the approved 5,000 sf outdoor display.

Staff Evaluation of Appeal Letter Points:

Robson's Counsel and authorized agent Francis J. Slavin submitted a comprehensive appeal packet for the Board's review and consideration. While staff does not agree with all of the points made in this document, staff will primarily focus on those statements made in Section III "Issues Presented", beginning on page 28 of their Appeal packet. Further, staff has noted which points we believe to be relevant to the Board's review and those we consider non-relevant.

Overall, there is no contention that Son Silver West was authorized to engage in a legal, nonconforming use of Tracts 41 and 42 (1476 SR179). Those uses identified in the CUP 92-3 were authorized by the City and are considered vested rights. However, the disagreement between the City and the Robson's continues to exist regarding what, if any, expanded use(s) was authorized by City staff. The City's position is that former Director John O'Brien did have the legal authority to interpret, enforce, and determine compliance with the Sedona Land Development Code (LDC) and the approved CUP 92-3, but, lacked any express authority to allow any expanded use of Tracts 41 and 42. Further, that any expanded use can only be approved by the Planning and Zoning Commission (P&Z) and even P&Z lacks the authority to approve the expanded use outside of a major amendment to the Sedona Community Plan and a subsequent zone change approval, which both require final approval through City Council action.

Staff Responses (presented in BLUE) to those points presented in the Appeal letter beginning on page 28 under Section III of the Applicant's packet. Please note that the following responses are staff's opinion of the relevance of each point:

A. The December 21, 2011 Decision by Community Development Director O'Brien.

Item A1: "Whether Former Community Development Director O'Brien had the legal Authority to Interpret, Enforce, and Determine Compliance with the 1992 CUP, Alternative Site Plan #2 and subsequent site plan and permit approvals issued by the City to Son Silver West?"

Response. (OPINION: NOT RELEVANT) The City does not disagree with this point. Former Director O'Brien had the legal authority to interpret, enforce, and determine compliance with the 1992 CUP, Alternative Site Plan #2, and subsequent site plan and permit approvals issued by the City to Son Silver West.

Item A2: "Whether the December 21, 2011 Decision was an approval issued by the Community Development Director in his official capacity at the City?"

Response. (OPINION: NOT RELEVANT) The City does not acknowledge that the December 21, 2011 communication from Director O'Brien was a "decision". Further, the City did not use this email communication as part of determining the code compliance issues identified in the 2015 NOV. As indicated previously, the City believes that the December 21, 2011 email communication from Director O'Brien and subsequent communication (specifically Rio Robson's December 23, 2011 acknowledgement Director O'Brien's December 21, 2015 communication) is best described as an invitation to dialogue about possible resolution of the longstanding issues related to permitted structures. In reviewing these communications, there was no conclusion reached and nothing refers to a modification of the CUP or the expansion of conditionally permitted uses. Because the NOV does not consider the existence of any 2011 decision, the NOVs cannot be challenged to the Board on those grounds.

Item A3: "Whether the current buildings, structures and uses on Son Silver West Tracts 41 and 42 are identical to those inspected and approved by Director O'Brien in his December 21, 2011 Decision"

Response. (OPINION: NOT RELEVANT) In reviewing the 2011 email communication from Director O'Brien there is no evidence of any approvals made by Director O'Brien. Because the NOV does not consider the existence of any 2011 decision, the NOVs cannot be challenged to the Board on those grounds.

Item A4: "Whether the Conceptual Site Plan and Photographs dated March 1, 2012 were submitted by Son Silver West to the Community Development Director in accordance with Director O'Brien's December 21, 2011 Decision?"

Response. (OPINION: NOT RELEVANT) The Robson's did not submit a site plan and related photographs by the March 1, 2012 deadline in response to the 2011 email communication. Further, as of May 2012, Director O'Brien indicated to staff that he had not received anything from the Robson's.

Item A5: "Whether the City of Sedona is estopped from issuing a Notice of Violation to Son Silver West for conditions on Tracts 41 and 41 determined to be in compliance by Director O'Brien in his December 21, 2011 Decision and subsequently recognized as compliance by Community Development Department staff and Directors for almost 4 years thereafter?"

Response. (OPINION: NOT RELEVANT) The City is not estopped from issuing a NOV to SSW for conditions in violation with the 1992 CUP and other applicable sections of the LDC as the City does not consider the existence of any decision related to the 2011 email communication. No documentation has been provided by the Applicant recognizing compliance by the Community Development Department. The policy of the Community Development Department for Code Enforcement is primarily reactionary. After Director O'Brien's retirement in July 2012, the City did not receive any complaints related to SSW. In the fall of 2014, based on a complaint received, the City opened a new code compliance case.

B. Appeal of Code Violations Listed in November 10, 2015 Notice

Item B1: "Corrective Action A.5: Whether a permitted shed located at 61 Arrow Drive may be used as a private religious and contemplative space accessory to a single-family residence?"

Response. (OPINION: RELEVANT) The language in the November 10, 2015 NOV corrective action for item A.5 reads: "Revert "Chapel" back to its approved use as a shed within 30 days of this Notice." The corrective action addresses its current use as a commercial retail space that has been identified as the "Chapel" by the Robson. The after-the-fact building permit (#B2523) submitted in 1993 was for a storage shed and was subsequently reviewed using those building and zoning code requirements applicable to a "shed" and approved as part of the 61 Arrow Drive property (tract 45). This structure was not reviewed or approved as a "Chapel" for public use or for retail purposes as part of the 1476 SR179 (tracts 41 and 42) property. As currently used, it is in violation of the 1992 CUP and single-family zoning regulations. A public religious and contemplative space in a single-family residential zoning district requires the approval of a conditional use permit. The NOV does not discuss the use as a private religious and contemplative space accessory to a single-family residence. If this is a direction that the Robsons wish to pursue, staff recommends that a meeting is scheduled to discuss further.

Item B2: "Correction Action C.1: Whether the Community Development Director erred in issuing a notice of violation to the owner of 1535 SR179 for unlawful overflow parking by customers and third parties after owner took necessary steps to post the vacant lot with "No Parking signs?"

Response. (OPINION: NOT RELEVANT) The issue of commercial parking of the residentially zoned vacant parcel south of SSW has been an ongoing code compliance issue for years. In the recent past, staff met with the Robson's on a number of occasions to discuss this issue further. During the course of these conversations, Staff provided a number of suggestions that might help mitigate the unlawful use of this property; these included the posting of "no parking" signs, use of their existing parking attendant to inform visitors of the parking restrictions, and the placement of physical barriers such as a gate, chain, fence, large boulders or other similar means to physically restrict access to the parcel. In response, the Robsons placed several "no parking" signs and indicated to staff that other options presented were not agreeable. The placement of "no parking" signs did not solve the code compliance issue as staff has observed continued violations related to overflow customer parking on this site. This limited and unsuccessful solution bears the question: Did the Robson's take all necessary and reasonable actions to mitigate the code violations related to overflow parking on the residentially zoned vacant park adjacent to their 1476 SR179 location? Staff has determined that this is not the case and found the continued use of this residential property for commercial parking to be a continued violation of the LDC single-family residential zoning regulations.

Item B3: "Correction Action C.2: Whether the Community Development Director erred in issuing a notice of violation to the owner of 1535 SR179 requiring that the owner cease and desist all use of the vacant lot for commercial purposes when the City of Sedona Community Development Department previously approved the relocation and construction of a commercial driveway on 1535 SR 179 to allow ingress and egress traffic to travel to and from Son Silver West Tracts 42 and 41 and the SR 179?"

Response. (OPINION: RELEVANT) ADOT was the agency responsible for improvements to SR 179 and ingress/egress modification for existing businesses. The City of Sedona acknowledges the changes to ingress/egress as a result of the SR 179 improvements made and does not contest the use of the drive aisle located in the northern portion of the 1535 SR179 property. What the City does contest is the use of this residentially zoned vacant property for commercial parking, loading/unloading of merchandise and other commercial purposes.

Item B4: "Correction Action D.1: Whether the existing outdoor retail display areas on Son Silver West tracts 42 and 41 are permitted as a result of : (1) the legal nonconforming outdoor retail display areas historically located on Tract 42 and (2) the 1992 CUP and Alternative Site Plan #2 approving the expansion of an additional 5,000 square feet of outdoor retail display area on tract 41, and (3) the 1993 Site Plan Approvals which allowed the transfer of some of the 5,000 s.f. of outdoor retail display approved under the 1992 CUP from Tract 41 to the former parking area along the frontage of Tract 42?"

Response. (OPINION: RELEVANT) Corrective Action D.1 states to "remove all outdoor retail display area in excess of the approved 5,000 sf." Outdoor retail display areas associated with SSW are permitted on the site in accordance CUP 92-3 and Alternative Site Plan #2. The CUP 92-3 Staff Report clearly outlines that the 5,000 sf of outdoor retail space did not have prior approvals and that the CUP process provided administrative relief for this unpermitted expansion in lieu of engaging in legal enforcement. The resulting approved CUP and conditions of approval allowed for outdoor retail space up to 5,000 sf. The 1993 Site Plan referenced in the Appeal letter is a site plan that was submitted as part of building permit #B2582. This permit was reviewed and issued for "Grading – Parking Lot." As a site plan associated with a grading permit, it was reviewed for that purpose and should not be seen as approving more than the parking lot/grading or as a change to the 1992 CUP approval. In other words, the site plan submitted as part of building permit #B2582 was not for "the transfer of some of the 5,000 sf of outdoor retail display approved under the 1992 CUP" but for grading and a parking lot only.

However, if the Robsons want to use this 1993 site plan for determining approved outdoor retail display space and supersede the 1992 CUP approval, it should be noted that this site plan shows a total of 4 "Display Areas" on the site plan, indicated by a hatch pattern. Three of these areas are between the building and SR179 while the 4th is between the building and the parking lot. Using the scale indicated on the plan and using a generous measurement for the size of each area, these areas total to no more than 2,200 sf, less than half of the 5,000 sf approved under the 1992 CUP. Further, it is important to note that the two buildings between the parking lot and the western boundary are shown as sheds and storage buildings with landscaping around them without any outdoor display. These buildings and these areas are currently used as retail buildings and display areas, something that was clearly not intended with this site 1993 plan or included in CUP 92-3.

Item B5: "Correction Action D.2: Whether the Son Silver West retail space in enclosed buildings is permitted up to approximately 4,328 s.f. as depicted in the survey map prepared by Shephard Wesnitzer, Inc. and approved by the Planning and Zoning Commission as part of the 1992 CUP Condition No. 1 as "Alternative Site Plan #2?"

Response. (OPINION: RELEVANT) The Corrective Action listed in the NOV is to remove enclosed retail areas in excess of CUP 92-3 approval of 2,250 sf. *"Conditions of Approval: 1. Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2)".* "Alternative Site Plan #2" does not include any square footages or a scale to determine square footages. All approved square footages are contained within the Staff Report, as referenced in Condition 1 (cited above). The Staff Report specifies 2,250 sf of retail in enclosed buildings, 5,000 square feet outside retail display area, 1,950 square foot single-family dwelling, 1,300 sf pottery shop with kiln, 590 sf of storage space, 750 sf workshop, sculpture (to be relocated), and two (2) freestanding signs. The site plan contains designations for "House," "Retail," "Shop", "Outside Display," and "Gallery." It is assumed that all uses not specifically called out are contained within the "Gallery." There is no mention anywhere for the allowance of 4,328 sf of enclosed retail space.

Item B6: "Correction Action D.2: Whether the southernmost building on Tract 41, referred to as "Building A" by Director Juhlin in the 2015 NOV, was approved as a storage shed to be used in connection with the existing Son Silver West commercial operations?"

Response. (OPINION: RELEVANT) The Corrective Action listed in the NOV is to remove enclosed retail areas in excess of CUP 92-3 approval of 2,250 sf. The shed referred to as Building "A" was not included in the 1992 CUP. However, the referenced "Building A" shed was approved through an after-the-fact building permit application (#B2524) in 1993. The application and permit specify that the work was for a "storage shed" and zoning comments state, "Storage shed is necessary due to implications of P&Z Commission approval of Case No. CUP 92-3." If the building permit application had been submitted for retail/commercial purposes, the permit would have been denied as it exceeded the total allowable indoor retail square footage that was approved as part of the 1992 CUP and requires approvals from P&Z to use this structure for retail/commercial purposes.

Item B7: "Correction Action D.2: Whether the northernmost building on Tract 41, referred to as "Building B" by Director Juhlin in the 2015 NOV, was approved as an art workshop to be used in connection with the existing Son Silver West commercial operations?"

Response. (OPINION: RELEVANT) The Corrective Action listed in the NOV is to remove enclosed retail areas in excess of CUP 92-3 approval of 2,250 sf including the shed referred to as Buildings "B" as included on the site plan submitted for Community Plan amendment and Zone Change consideration. The referenced "Building B" was included in the 1992 CUP review and approval process as a shop. This structure was not approved for retail purposes in CUP 92-3. An application to change the use from a shop to enclosed retail space beyond what was approved as part of CUP 92-3 requires approvals from P&Z.

Item B8: "Correction Action D.3: Whether the single-family residence depicted on Alternative Site Plan #2 as "House" was approved as an administrative office and employee lounge by Director O'Brien's December 21, 2011 Decision?"

Response. (OPINION: NOT RELEVANT) The Corrective action listed in the NOV for D.3 requires that the 1,950 square feet of the primary single-family dwelling unit be restored back to a single-family residential use. The legal nonconforming use and the use as approved in CUP 92-3 allowed for the property owner to live on site and have a small retail gallery not to exceed 2,250 sf ancillary to the residence. Because the City does not consider the existence of any 2011 decision, no approvals were provided to convert the home to an administrative office, employee lounge or to any other commercial uses. However, in reviewing the documentation submitted by the Robsons, staff was unable to find anything referring to an "employee lounge".

Item B9: "Correction Action D.4: Whether the existing wrought-iron fence lying along the frontage of Tract 42 was approved by Director O'Brien and issued a fence permit in accordance with Condition 6 to the 1992 CUP?"

Response. (OPINION: RELEVANT) The Corrective action listed in the NOV for D.4 states that to minimize visual impacts and maintain an attractive appearance of the outdoor display area, suitable screening needs to be incorporated and found to be in compliance by the Community Development Director. While this area may have been screened to the satisfaction of the Director at one time, based on its current state, it no longer meets LDC screening requirements for outdoor display and needs to come back into compliance in accordance with CUP 92-3 conditions of approval.

Item B10: "Correction Action D.5: Whether the existing light fixtures on Tracts 42 and 41 were approved by Director O'Brien in accordance with Condition 9 to the 1992 CUP?"

Response. (OPINION: NOT RELEVANT) Because the City does not consider the existence of any 2011 decision, no decisions were provided that deemed the lighting fixtures to be in compliance with Condition 9 of CUP 92-3. However, the Corrective action listed in the NOV for D.5 states that to minimize visual impacts and maintain an attractive appearance, the outdoor lighting fixtures need to be shielded and found to be in compliance by the Community Development Director. While the outdoor lighting may have been shielded to the satisfaction of the Director at one time, based on its current state, these light fixtures no longer meet LDC screening requirements for outdoor display and needs to come into compliance in accordance with CUP 92-3 conditions of approval.

Item B11: "Correction Action D.6: Whether the existing shade structures on Tracts 24 and 41 were approved by the December 21, 2011 Decision by Director O'Brien?"

Response. (OPINION: NOT RELEVANT) Because the City does not consider the existence of any 2011 decision, no approvals were provided to approve shade structures on Tracts 41 and 42.

Item B12: "Correction Action D.6: Whether the 1992 CUP approval, Conditions of Approval, or Alternative Site Plan #2 limit square footage of shade structures erected in outdoor retail display areas on the Sun Silver West property?"

Response. (OPINION: RELEVANT) The Corrective action listed in the NOV for D.6 requests that building permit applications must be submitted for shade structures erected and/or expanded without prior approvals. Although one building permit was located providing for the construction of a shade structure, this shade structure has increased in size, nearly doubling that which was approved. The City has no record of any building permits for the remaining shade structures existing on site. Further, CUP 92-3 did not provide for

shade structures in its approval nor are they depicted on the Alternative Site Plan #2. With the approval of appropriate building permits for said shade structures, staff does not contest the inclusion of shade structures. However, the approval of shade structures does not provide for the allowance of additional outdoor retail space.

Item B13: "Correction Action D.7: Whether the existing 6-foot tall solid wood fence and the 6-foot tall masonry wall lying along the west lot line of S on Silver Wets Tract 41 and 41 require the issuance of a wall permit under the City of Sedona Building Code?"

Response. (OPINION: RELEVANT) The Corrective action listed in the NOV for D.7 requests that building permit applications be submitted for the fence along the western side of the property and the stucco wall constructed without prior approvals. Based on the LDC requirements governing the construction of fences and walls, these two structures are subject to building permit review and approval prior to construction.

Item C Chilies: "Whether the preparation, roasting, display and vending of chilies on Son Silver West property are permitted as legal nonconforming use?"

Response. (OPINION: RELEVANT) The inclusion of food services of any kind was not a consideration of CUP 92-3 and no provisions for food services were provided in the staff report or conditions of approval. Therefore, this use is not a permitted legal nonconforming use. As a side, based on a conversation with a Coconino County Health Department representative, it was determined that this food service operation did not have any Health Department required approvals and that for the Health Department to approve this food service use, the property owners would be required to make changes to meet applicable requirements, separate from required City approvals.

Item D Business License: "Whether the revocation of the Son Silver West's Business License under Section 5.05.040(S) of the Sedona City Code is a lawful method for enforcing the Sedona Land Development Code?"

Response. (OPINION: NOT RELEVANT) While the Sedona City Code provides for the revocation of a business license if code compliance issues exist, because the Director does not have the authority to revoke or suspend a business license this item is not relevant to the Board's discussion.

Item E Unlawful Revocation of the 1992 CUP for Violations on Properties separate and apart from Son Silver West Property Governed by 1992 CUP"

Response. (OPINION: RELEVANT) Possible revocation of CUP 92-3 would be considered based on violations existing on those properties governed by CUP 92-3. Only violations associated with Tracts 41 and 42 (1476 SR179) could trigger the consideration of revocation of the CUP. All violations existing on the three neighboring single-family residential properties (Tracts 40, 45 and 49) were not included in CUP 92-3 and would not be used as part the consideration to revoke the CUP. However, these properties are subject to code enforcement actions.

CONCLUSION

The basis for this Appeal is the issuance of two (2) separate NOVs, dated November 10, 2015 by the Community Development Director. While staff has provided responses to each of the points raised in the Appeal letter, beginning on page 28 under Section III Issues Presented, it is important to note that staff has also identified those points we believe are most relevant for consideration by the Board and those points we believe not relevant.

The role of the Board is to compare the existing, nonconforming uses of the Applicant's property against the authorized legal nonconforming uses identified in the Conditional Use Permit issued in 1992; and, to determine if any expanded uses beyond those identified in the 1992 Conditional Use Permit may now be properly allowed. As evidenced in this Staff Report, the Robsons have a long history of code violations dating back prior to the City's incorporation. The Robsons have historically modified their properties, expanded and/or introduced new uses, and made changes all in violation of LDC regulations, as well as conditions of approval associated with CUP 92-3. No approvals have been issued by the City of Sedona granting any of these modifications, expansions, new uses or other changes that would allow Sun Silver West to continue to operate commercial activities on all four single-family properties.

It is important to remind the Board that all four subject properties (Tracts 40, 41, 42, 45, and 49) are zoned single-family residential (RS-18b). The purpose of this residential zoning designation (see Attachment 6) as described in subsection 605 of the LDC is: ***"This district is intended to promote and preserve low density single-family residential development. The principal land use is single-family dwellings and incidental or accessory uses."*** This important point is easily lost when one considers that the principal land use as it currently exists is no longer single-family, but commercial.

To conclude, staff requests that the Board exercise its powers and duties including, but not limited to, hearing, reviewing, and acting on appeals of the decisions of the Director of Community Development regarding an interpretation of the Sedona Land Development Code, LDC 304.01(B) and uphold staff's interpretation of the applicable Land Development Codes identified in the November 10, 2015 Notice of Violations. And, furthermore, make this decision to uphold staff's interpretation of LDC because there is **not an error in an order, requirement or decision made by the zoning administrator** in the enforcement of a zoning ordinance adopted pursuant to A.R.S. § 9-462.06.

Attachments:

- 1. Vicinity Aerial Maps**
- 2. November 10, 2015 Overview Letter and Notice of Violations from Director**
- 3. 1992 CUP Staff Report**
- 4. CUP 92-3 Conditions of Approval and June 7, 1994 Agreement between the City and the Robsons**
- 5. Other Notice of Violations and Issues including the October 8, 2014 NOV**
- 6. Land Development Code references**
- 7. Public Comments**
- 8. Appeal Application Documents (provided by the applicant and distributed in early December 2015)**

1. Vicinity Aerial Maps



Arrow
Property

BLDG.
"J"

BLDG.
"I"

BLDG. "H"

BLDG.
"E"

BLDG.
"G"

BLDG.
"C"

BLDG.
"D"

BLDG.
"F"

BLDG.
"B-2"

BLDG.
"B-1"

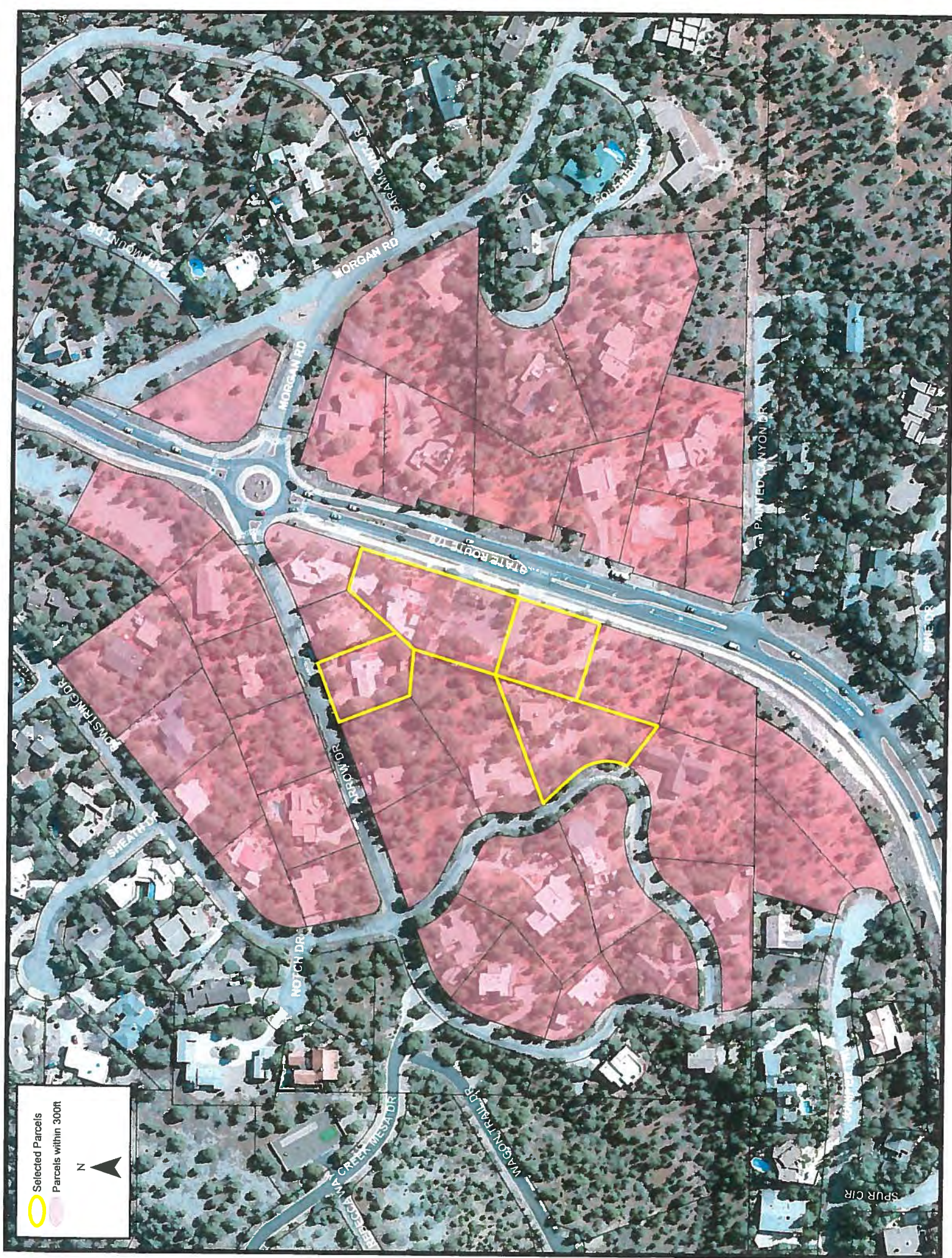
Son Silver
West
Property

BLDG.
"A"

Vacant
Tract 40

Bowstring
Property

N



Selected Parcels
Parcels within 300ft

N

**2. November 10, 2015 Overview Letter and Notice of Violations
from Director**



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

MEMORANDUM

TO: Francis J. Slavin and Heather Dukes, Legal Counsel for the Robsons
FROM: Audree Juhlin, Community Development Director
DATE: November 10, 2015
RE: Son Silver West Legal Memorandum dated September 22, 2015

On September 8, 2015, City staff met with the Robsons and legal counsel for Son Silver West regarding outstanding alleged Code violations. At the conclusion of that meeting, it was mutually agreed to suspend further and more formal code enforcement actions until legal counsel for the Robsons had the opportunity to prepare a legal opinion of the concerns discussed at this meeting.

In response, legal counsel submitted a Memorandum to the City on September 22, 2015 detailing multiple findings and opinions. As a result, City staff conducted a thorough analysis of this Memorandum and concluded that while the document and attachments provided a detailed overview of the property history, it did not provide substantive proof of formal approvals supporting existing conditions relative to the identified alleged Code violations.

At the crux of the discussion is whether or not then Director John O'Brien purported to exercise legal authority to approve changes to the 1992 Conditional Use Permit (CUP) consistent with conditions at Son Silver West today. Further, whether any credible documentation has been provided which would reasonably demonstrate what conditions existed in 2011. The City's position is that Director O'Brien never gave any formal approval; and regardless, would not have had the authority to do so. Further, even if Director O'Brien had the authority to administratively change the CUP, and even if the materials submitted by the Robsons were considered complete in spite of the fact they were never confirmed as such by Director O'Brien, those materials nevertheless fail to substantiate that conditions outlined in the attached Notice of Violation were in fact present prior to 2011 and not created afterward.

Land use on this site is governed by a regulatory conditional use permit (CUP). Former Director O'Brien had no authority to conditionally approve changes that directly affect the approved 1992 CUP, through unilateral administrative action. The Land Development Code (LDC), Subsection 402.12 (Conditional Use Permit – Validity and Revisions) states, *"Any proposed revisions or changes to an approved conditional use permit application shall be submitted in the same manner and subject to the same approval process as the original review."* Because Son Silver West has made changes deviating from the 1992 CUP, these changes are subject to review and consideration as prescribed in Section 402 (Conditional Uses). This section of the LDC does not provide for administrative consideration or approvals at a staff level. Therefore, former Director O'Brien did not have the authority to substitute an administrative action for the regulatory requirements prescribed in the LDC relating to modification of a CUP and unilaterally approve changes to the CUP.



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The Memorandum and attachments did not provide sufficient proof of any formal approvals that support existing conditions. When reviewing the email exchange, it is clear that a March 1, 2012 deadline was established for the Robsons to supply the requested information. It is also clear based on a May 8, 2012 email from former Director O'Brien to staff that he had not received the requested documentation from the Robsons. As of today's date, staff has been unsuccessful in locating any such documentation that John O'Brien, or any other staff may have received in response to the 2011 email request. What the email exchange in December of 2011 does clearly illustrate is a palpable level of frustration in former Director O'Brien resulting from his many years of attempting, unsuccessfully, to achieve cooperative solutions to Son Silver West's outstanding violations.

After thorough review, staff has determined that the documentation supplied by the Robsons in the summer of 2015, is insufficient, does not satisfy the 2011 email request and fails to substantiate that conditions subject to the attached Notice of Violation were present in 2011. The map submitted is not considered an adequate site plan, but rather a more informal marketing map used for customers to navigate the site. The map does not accurately portray what is on site and the photos are not adequately keyed to the map. The buildings are not correctly represented in size, shape, orientation and location, and it does not sufficiently depict property lines. For instance, the Chapel is shown on the 1476 SR179 property, when in fact it is located on the 61 Arrow Drive property. Additionally, the map does not depict shade structures or outdoor display areas. Since the original impetus for former Director O'Brien's request was a question regarding the legality of the shade structures, the logical result would have been a site plan that showed the shade structures.

Further, staff was unable to satisfactorily evaluate the pictures submitted as they are black and white and the exterior photos are of poor quality; many are washed out by sunlight or include significant shadows and do not provide staff with a clear understanding of the size, scope, location and nature of the conditions at that time the photos were taken. None of the buildings have photos of all of the exteriors and large portions of the site seem to have been excluded, based on the best guess of photo locations by staff as shown on the map.

In conclusion, staff believes that while the Memorandum is thorough and for the most part provides a detailed overview of the history of the property, the information presented does not provide sufficient proof that any formal approvals exist allowing the expansion of the site beyond what was approved in the 1992 CUP. Further, there is a mutual obligation for the City to correctly administer the applicable laws and for Son Silver West to conform to those laws. Moreover, the City is compelled to ensure that any misapplication of laws in the past, real or perceived, is corrected. Therefore, staff is reinstating formal code enforcement actions as identified in the attached Notice of Violation.



City of Sedona Community Development Department

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NOTICE OF VIOLATION

November 10, 2015

Son Silver West Gallery Inc.
Robson Design
Robson LR Living Trust
Robson Linda Rose and William B Trustees
C/O Rio Robson
1476 State Route 179
Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has determined that your businesses, Son Silver West Gallery Inc. and Robson Design continue to operate in violation of the Sedona Land Development Code and City Code. On October 8, 2014, a Notice of Violation (NOV) for several code violations was issued to Son Silver West Gallery, Inc. and Robson Design. As a result of that NOV, you began working with City staff towards submitting an application for an amendment to the Sedona Community Plan and rezoning that, if approved, would have addressed those code violations. City Staff made the determination to suspend code enforcement actions pending the outcome of those applications.

However, on August 12, 2015, the City received notice from your agent, Brian Furuya, of Aspey, Watkins and Diesel, PLLC, that you were withdrawing these applications. As a result of this decision, the City had no alternate course to remedy non-compliance and had to reinstate code enforcement activities. However, based on an additional meeting on September 8, 2015 with you and your new legal counsel, staff once again agreed to suspend formal code enforcement action until your counsel could submit information relative to the identified issues. However, after review of the documentation submitted, staff found no evidence that provided any formal approval allowing for the existing conditions and expansion above that which was approved as part of the 1992 CUP. Therefore, staff is once again resuming formal code enforcement actions as evidenced in this Notice of Violation.

As discussed at the September 8, 2015 meeting, in addition to the violations identified in the October 8, 2014 NOV, additional violations have been identified that also require immediate attention. These violations are based on the statements contained in your Community Plan amendment and rezoning applications, citizen input, and staff observations.

As you are aware, because Son Silver West Gallery Inc. was operating as a commercial business on a single-family residential property (1476 SR 179, APN 401-31-012A) prior to the City's incorporation in 1988, it is considered grandfathered as a legal nonconforming use. Based on Article 12 (Nonconforming Situations) of the Sedona Land Development Code, Son Silver West, as operating currently, is a nonconforming development containing a nonconforming use. Pursuant to this article, a legal nonconforming development and use cannot expand unless the expansion conforms to the regulations



City of Sedona Community Development Department

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specified for the zoning district in which it is located. When a nonconforming use occupies a building, expanding the use into additional buildings or land areas is prohibited. As a result of illegal expansions in the early 1990s, Conditional Use Permit (CUP) 92-3 was granted by the Planning and Zoning Commission on September 15, 1992.

Condition 1 of the Conditions of Approval for CUP 92-3 (enclosed) states that the "uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2)". The uses and physical improvements listed in the staff report (enclosed) are as follows:

- 2,250 square feet of retail space in enclosed buildings
- 5,000 square feet of outside retail display area
- 1,950 square foot single family dwelling
- 1,300 square foot pottery shop with kiln
- 590 square feet of storage space
- 750 square foot workshop
- Sculpture
- 2 free standing signs
- Building coverage at approximately 17%
- Parking located between gallery and Highway 179 (*This was later modified to the south-side of the property to address State Route 179 improvements*)

Staff has determined that Son Silver West has expanded beyond this scope and is conducting business activity in violation of CUP 92-3, single-family zoning regulations, and nonconforming use restrictions. In addition to the significant expansion of the retail operation at 1476 SR 179 (APN 401-31-012A), the expansion also includes the use of three nearby single-family residential properties also zoned RS-18b (61 Arrow Drive, 365 Bowstring Drive, 1535 SR 179). As explained in the past, the existing zoning for these single-family residential lots (RS-18b) does not allow for commercial uses.

The following is a summary of the outstanding Code violations and the timeframe for compliance:

- A. **VIOLATION: 61 Arrow Drive, Single-family house (APN 401-31-016)** alleged violations include warehousing, manufacturing (welding and assembly), shipping/receiving and employee parking which are uses that are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b), Article 9 (Development Standards), Article 12 (Nonconforming Situations), and City Code Chapter 15 (Building Code).

During discussions with you and Mr. William Robson, it was disclosed that Mrs. Robson has an office space at 61 Arrow Drive. Because this location is not Mrs. Robson's primary residence, this use is not in compliance with Sedona Land Development Code, Article 6 (District Regulations RS-18b), and Article 9 (Development Standards).

Also in the early 1990s it was discovered that a shed was constructed in the rear portion of the property without a building permit. An after-the-fact building permit application was submitted in



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

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1993. Sometime after this approval, the shed was converted to a commercial "Chapel" and an unpermitted block wall was constructed across property lines in order to permit a portion of the yard at 61 Arrow Drive to become a part of the 1476 SR 179 (APN 401-31-012A) retail property. These modifications and construction activity are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b), Article 9 (Development Standards), Article 12 (Non-Conforming Situations), and City Code Chapter 15 (Building Code).

- A.1 **CORRECTIVE ACTION:** *Cease and desist all commercial use of this property including but not limited to employee parking, warehousing, manufacturing (welding and assembly) activities, shipping/receiving associated with Son Silver West Gallery and Robson Design and return the structure back to a single family house and use within 30 days of the date of this Notice.*
- A.2 **CORRECTIVE ACTION:** *Cease and desist any office/commercial use that is not in compliance with the Land Development Code Home Occupation requirements within 30 days of the date of this Notice.*
- A.3 **CORRECTIVE ACTION:** *Submit an application for a compliant building permit for the block wall constructed on 61 Arrow Drive and 1476 SR179 without a permit or remove wall within 30 days of the date of this Notice.*
- A.4 **CORRECTIVE ACTION:** *Cease using space located on the rear portion of 61 Arrow Drive adjoining to 1476 SR179 property as commercial space within 30 days of the date of this Notice.*
- A.5 **CORRECTIVE ACTION:** *Revert "Chapel" back to its approved use as a shed within 30 days of the date of this Notice.*
- B. **VIOLATION: 365 Bowstring Drive, Single-family house (parcel #401-31-020)** issues include employee parking and commercial activities including warehousing of merchandise
 - B.1 **CORRECTIVE ACTION:** *Immediately cease and desist all use of this property for Son Silver West Gallery and Robson Design for employee parking.*
 - B.2 **CORRECTIVE ACTION:** *Immediately cease and desist all commercial activities including but not limited to warehousing for Son Silver West Gallery and Robson Design.*
- C. **VIOLATION: 1535 SR 179, Vacant (parcel #401-31-011)** issues include "over-flow" parking, receiving and storage of merchandise which are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b) and Article 12 (Non-Conforming Situations).
 - C.1 **CORRECTIVE ACTION:** *Immediately cease and desist all use of this property for parking.*
 - C.2 **CORRECTIVE ACTION:** *Immediately cease and desist all use of this property for commercial purposes including but not limited to shipping/receiving activities and storage of merchandise.*
- D. **VIOLATION: 1476 SR 179 (parcel #401-31-012)** Uses approved for the commercial activity are bound by conditions of approval of the 1992 CUP. Condition 1 states that uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992 and as approved by the Planning and Zoning Commission (alternative site plan #2). Therefore, all uses and physical improvements beyond those outlined above are in violation of the



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conditions of approval for the 1992 CUP. Condition 6 states that outside sales/display area shall be screened by a six-foot high fence; the existing outside sales/display area is not in compliance with this requirement. Condition 9 states that all exterior outside lighting shall be shielded; the existing outdoor lighting does not meet shielded lighting requirements.

- D.1 CORRECTIVE ACTION:** Remove all outdoor retail display area in excess of the approved 5,000 square feet within 30 days of the date of this Notice.
- D.2 CORRECTIVE ACTION:** Remove all enclosed building retail areas in excess of the approved 2,250 square feet within 30 days of the date of this Notice. Buildings "A and B" as included on the site plan for the recent applications need to be returned to storage sheds and not retail display or other commercial purposes.
- D.3 CORRECTIVE ACTION:** restore 1,950 square feet of the primary dwelling unit back to single-family residential within 30 days of the date of this Notice.
- D.4 CORRECTIVE ACTION:** In accordance with Condition 6 and the Sedona Land Development Code, to minimize visual impacts and maintain an attractive appearance of the outdoor display area, suitable screening needs to be incorporated and found to be in compliance by the Community Development Director within 30 days.
- D.5 CORRECTIVE ACTION:** In accordance with Condition 9 and the Sedona Land Development Code, update outdoor lighting fixtures to be shielded and found to be in compliance by the Community Development Director within 30 days of the date of this Notice.
- D.6 CORRECTIVE ACTION:** Submit building permit applications for the shade structures erected and/or expanded without prior approvals within 30 days of the date of this Notice.
- D.7 CORRECTIVE ACTION:** Submit a building permit application for the wall/fence erected along the backside of the property without prior approvals within 30 days of the date of this Notice.

Note: Several of the above referenced corrective actions may require the submittal and approval of a building permit. If unsure whether a building permit is required, please check with staff prior to starting the work.

Revocation of Conditional Use Permit (Section 402.10 Sedona Land Development Code). The Sedona Land Development Code states that if it is determined that the conditions of approval for a CUP are not being met, then the CUP is suspended automatically. You are hereby officially notified that your property is not in conformance with the conditions of approval of the 1992 CUP based on the issues outlined in this Notice. If the issues identified in this Notice are not corrected within 30 days, the Planning and Zoning Commission will hold a public hearing within 40 days in accordance with the procedures prescribed in subsection 402.04 of the Sedona Land Development Code. If not satisfied that the conditions in question are being complied with, the Commission may revoke the conditional use permit or take action necessary to ensure compliance.

Staff understands that you believe many of these violations have been addressed through an email exchange with former Community Development Director John O'Brien in 2011/2012. While we are aware of certain limited communications discussing the site conditions, staff's records reflect that no formal approval in conformance with the Sedona Land Development Code or Sedona City Code has been granted. Staff believes that while the documentation submitted by your legal counsel provides a



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102 Roadrunner Drive Sedona, AZ 86336

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detailed overview of the history of the property, the information presented does not offer satisfactory proof that any formal approvals exist allowing the expansion of the site beyond what was approved in the 1992 CUP. Further, based on the regulatory process outlined in the Land Development Code, former Director O'Brien did not have the legal authority to approve any modifications to this CUP.

Business Licenses and Regulations Section 5.05.020 of the Sedona City Code requires that all businesses be in compliance with any and all regulations specified in the Sedona City Code, Sedona Land Development Code, and Arizona Revised Statutes. Per Section 5.05.040(A) of the Sedona City Code, a business license may be suspended, revoked or deemed invalid, if it is determined that a business owner has violated or is not in compliance with either the Sedona City Code, Sedona Land Development Code or the Arizona Revised statutes. It is considered unlawful to operate a business within the Sedona City limits without a business license.

PENALTIES: In addition to the revocation or suspension of the conditional use permit, failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 per offense for each day that offense is occurring or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

It is our hope that you will voluntarily bring the alleged violations into compliance or provide evidence of compliance within the 30 day time period. Staff will schedule a walk through inspection in 30 days from the date of this NOV to verify compliance. Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audree Juhlin, Director

Community Development Department

cc: Justin Clifton, Sedona City Manager
Karen Daines, Assistant City Manager
Robert Pickels, Sedona City Attorney
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Sedona Police Chief
Cherie Wright, Finance Director

Encl. CUP-92-3 Conditions of Approval
October 8, 2014 Notice of Violation



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

NOTICE OF VIOLATION

November 10, 2015, 2015

Son Silver West Gallery Inc.
Robson Design
C/O Rio Robson
1476 SR 179
Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has identified a new issue related to your businesses, Son Silver West Gallery Inc. and Robson Design. On November 3, 2015 and subsequent days thereafter, staff has observed what appears to be a food service operation as part of Son Silver West's business located 1476 SR 179. These activities include the preparation, roasting, display and vending of chilis. Related to this activity is a sign advertising "Fresh Roasted Chilis" in front of Son Silver West.

As you are aware, Son Silver West Gallery Inc. is operating as a commercial business on a single-family residential property (1476 SR 179, parcel #401-31-012A) with an approved 1992 Conditional Use Permit (CUP). As such, Son Silver West is subject to those conditions of approval and cannot expand without proper approvals. In this case, as explained in the past, Son Silver West cannot expand beyond what was originally approved in the 1992 CUP. Any commercial changes or expansion beyond the 1992 CUP requires a Community Plan amendment and zone change.

VIOLATIONS:

Because the 1992 CUP does not provide for commercial food service, including food preparation, roasting, display and vending of food, Son Silver West is not in conformance with the 1992 CUP and is in violation of the following Sedona Land Development Codes:

Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses. Son Silver West's unauthorized inclusion of commercial food services at the 1476 SR 179 location is in violation of the Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses) – expansion of a non-conforming use.

Sedona Land Development Code, Article 4 (Conditional Uses) Section 402.12 Conditional Use Permit – Validity. Son Silver West's unauthorized inclusion of commercial food services at the 1476 SR 179 location is not permitted as part of its approved CUP.

Sedona Land Development Code, Article 6 (District Regulations). The inclusion of commercial food service at the 1476 SR 179 location is not a permitted use in the single-family zoning district in which Son Silver West is located.



City of Sedona Community Development Department

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Additionally, in speaking with representatives of Coconino County Health Department, it appears that Son Silver West did not obtain approvals applicable to commercial food services.

It is important to note that in accordance with Sedona City Code, Title 5, (Business Licenses and Regulations) a business license may be suspended, revoked or deemed invalid for a number of reasons, including a violation of or non-compliance with either Sedona City Code, Sedona Land Development Code, or the Arizona Revised Statutes. The inclusion of commercial food services on a single-family residentially-zoned property is considered a violation of the Sedona Land Development Code and is not a use that is provided for in the approved 1992 CUP.

CORRECTIVE ACTION NECESSARY:

- Immediately cease all commercial food service activity including the preparation, roasting, display and vending of produce, including but not limited to chilis.

PENALTIES:

Failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audree Juhlin, Director

Community Development Department

cc: Justin Clifton, Sedona City Manager
Karen Daines, Assistant City Manager
Robert Pickels, Sedona City Attorney
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Sedona Police Chief

3. 1992 CUP Staff Report



2940 Southwest Dr
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
FAX (602) 282-7207

SUMMARY SHEET
SON SILVER WEST GALLERY

CASE NUMBER: CUP 92-3

MEETING DATE: September 15, 1992

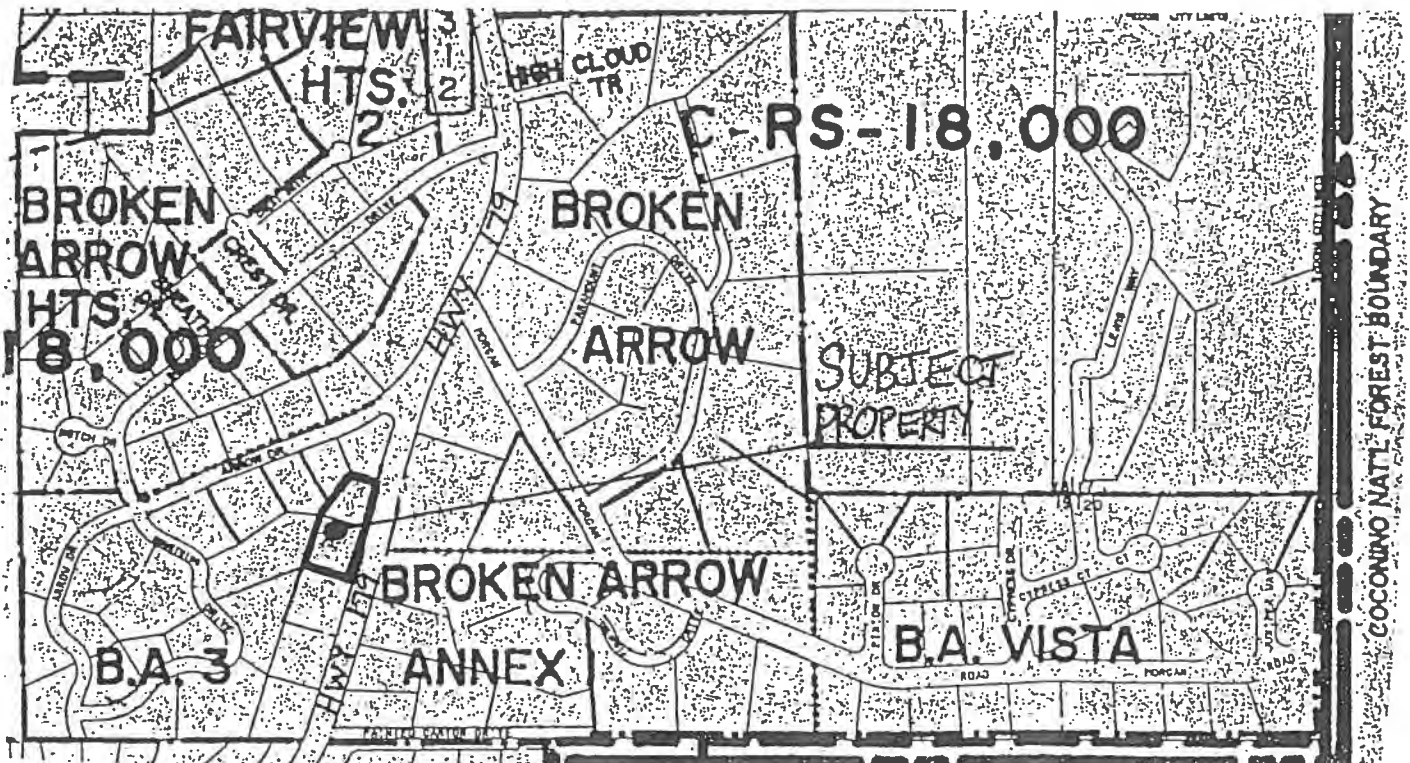
APPLICANT: William and Linda Rose Robson
Son Silver West Gallery

PROPOSAL: Request for approval of a conditional use permit (CUP) to allow for continued use of an expansion of a nonconforming business in a residential zone. Construction of a 17-space parking lot is also proposed.

LOCATION: Along the west side of Highway 179 approximately two hundred (200) feet south of the Highway 179/Arrow Drive intersection. The subject site is identified as Assessor's Parcel Numbers 401-31-012 and 013.

SITE SIZE: .83 acres

CURRENT ZONING: C-RS-18,000 (Residential: Single-family)



Summary Sheet
Son Silver West Gallery
September 15, 1992, Page two

AREA LAND USES

AREA ZONING

North: real estate and dentist offices	C-RS-18,000 (Residential: Single-family)
South: vacant	same
East: vacant	same
West: single-family residences	same

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS



2940 Southwest Ave
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
FAX (602) 282-7207

STAFF REPORT

TO: Planning and Zoning Commission
THROUGH: ^{TS} Tom Schafer, Director of Community Development
FROM: John O'Brien, Associate Planner *JOB*
Department of Community Development
MEETING DATE: September 15, 1992
APPLICANTS: William and Linda Rose Robson
Son Silver West Gallery
CASE NUMBER: CUP 92-3

BACKGROUND

The Son Silver West Gallery, located on Highway 179 in Sedona, was originally constructed in 1960 and operated under the name La Galleria. Zoning in Coconino County was initiated in 1964. The subject property was subsequently placed in the C-RS-18,000 (Single-family Residential) zone classification along with other properties in the Broken Arrow Heights subdivision in which it is located. The gallery and its primary structures has thus operated on a legal nonconforming basis since 1964. Since that time the property has undergone several changes including the construction of a pottery shop/kiln building, workshop/storage space and establishment of outside display areas.

The City of Sedona and the current property owners disagree about the legal establishment of the large outside display area associated with the business as well as other associated uses on the southern one-half portion of the subject property.

The applicants contend that the five thousand (5,000) square foot area now used for outside retail display purposes was also similarly used by the previous owner, and thus, also enjoys a nonconforming or "grandfather" status. The applicants have also stated that since 1981, the year they purchased the property, the outside display area has remained essentially unchanged, notwithstanding the landscape improvements performed on site. The applicants assert that they have not enlarged or expanded any of the outside display areas on the property over the past several years.

The City of Sedona disagrees.

Staff Report
Son Silver West Gallery
September 15, 1992, Page 2

Coconino County Assessor's office records indicate that the display area property was assessed as vacant land as recently as 1986. The County Planning Department has further indicated that the parcel now used for outside display and sales was not being utilized for display purposes in 1986. After City inspection of the property in May of 1989, the applicant was cited for a Zoning Ordinance violation regarding the expansion of a nonconforming use (the gallery) without compliance with applicable City Ordinance requirements.

This discrepancy of position can only be resolved in one of several ways. One would be to take the issue to court as an enforcement action. Alternately, the property owners can exercise legally available avenues of administrative relief and seek approval at public hearings. The applicant did attempt to exercise this second alternative twice in 1991. A zone change request from C-RS-18,000 to C-CG-10,000 (Commercial-General) and C-P (Parking) was filed in December, 1990, but was withdrawn by the applicant on February 5, 1991, the date the Planning and Zoning Commission was to consider the request. Subsequently, on February 7, 1991, the applicant filed a conditional use permit request to allow for the expansion of a nonconforming use, including the construction of a 12-space parking lot on the southern one-quarter of the site. The request was considered by the Commission on March 5, 1991. Public comment was taken at the hearing and the item was continued to the March 19, 1991, meeting. However, the applicant again withdrew the application the day of the hearing. The reason given for the withdrawal was that the Arizona Department of Transportation was requiring the applicant to construct a left-hand turn lane on Highway 179 for the proposed 12-space parking lot for north-bound traffic. The applicant needed time to evaluate the costs associated with Arizona Department of Transportation's (ADOT's) requirement and also to explore alternatives which might be implemented in lieu of the turn lane.

On March 11, 1992, the applicant again filed a similar conditional use permit request to allow for the expansion of a nonconforming use. This request attempts to bring a long established nonconforming retail use in a single family residential zone and disputed expansions which have occurred in recent years into compliance with current City zoning requirements.

On July 7, 1992, the Commission continued case number CUP 92-3 to September 15, 1992, to allow time for the applicant to hire a traffic engineering specialist, conduct a traffic impact study and revise the site plan. On August 18, 1992, the applicant submitted the traffic impact study and two alternative site plans.

Alternative site plan #1 shows a 47-foot wide two-way driveway and three parking spaces in front of the existing building. A 17-space parking lot is shown on the southern one-fourth of the property with one-way traffic flow provided by two curb cuts on Highway 179.

Alternative site plan #2 shows a 30-foot wide one-way drive, with no parking in front of the building. This drive would access the new 17 space lot on the southern one-fourth of the property. The new parking lot would also be accessed the same as site plan #1.

Both plans discuss expansion and shifting of the existing outside display area. Several trees will probably have to be removed if either site plan was implemented.

No Highway 179 improvements are proposed in either case.

SITE CHARACTERISTICS

- .83 acres
- physical improvements include:
 - 2,250 square feet of retail space in enclosed buildings
 - 5,000 square feet of outside retail display area
 - 1,950 square foot single family dwelling
 - 1,300 square foot pottery shop with kiln
 - 590 square feet of storage space
 - 750 square foot workshop
 - sculpture (to be relocated)
 - 2 freestanding signs
- current building coverage approximately 17%
- parking located between gallery and Highway 179

DEVELOPMENT PROPOSAL

- conditional use permit requested to allow for expansion of nonconforming use
- if approved, would allow for continued use of 5,000 square foot outside sales/display area with minor modifications, and construction of 17-space parking lot on southern one-fourth of property

Access

- Highway 179 for existing and proposed parking areas

Parking

- as previously discussed in report

Grading/Drainage

- grading for new parking lot
- existing minor drainageway culverted and filled

Wastewater Disposal

- no alterations to existing septic system

Signage

- parking lot identification signs only
- unlit, wood construction

Outside Lighting

- existing lighting
 - signage floodlights
 - security floodlights
 - mercury vapor pole in outside display area
- no new lighting proposed

Vegetation/Landscaping

- several existing trees may have to be removed
- no landscaping information provided

Outside Display Area/Screening Requirements

- Section 211.08 (Open Air Business) of Interim Zoning Ordinance requires screening of outside display areas.
- wooden fencing/living and dead ocotillo cactus proposed for screening, similar to existing screening on west boundary of display area

COMMENTS AND CONCERNS

Community Development

- 34 parking spaces are required; 17-20 are provided. Applicant's parking proposal, although not in compliance with Ordinance requirements, represents an improvement over a less than ideal existing situation. Planning and Zoning Commission has authority to waive parking requirements under a CUP approval.
- New parking lot must be screened from the residentially zoned property immediately to the south. Staff suggests fencing and/or landscaping.
- Existing mercury vapor light should be changed to sodium type and properly shielded.
- The new parking lot should be designed around existing trees so that they are minimally affected by the proposed improvements

Engineering Department

- agrees with ADOT regarding the need for improvements to Highway 179
- could support alternative #2 if Highway 179 improvements were included
- could not support alternative #1

Police Department

- numerous left-turn related accidents have occurred at this location caused by northbound Highway 179 traffic turning into existing parking area; addition of new parking area will aggravate existing potentially dangerous left-turn situation
- sight distance from new parking lot to the south on Highway 179 is inadequate

Arizona Department of Transportation (ADOT)

- traffic impact study does not demonstrate the need for three driveways; only one driveway is needed for a development of this size
- widening of Highway 179 to provide a left-hand turn lane for north-bound traffic and a deceleration lane for southbound traffic is strongly recommended

ANALYSIS

Staff's review focused on:

Compliance with Ordinance and Reviewing Agency Requirements

The proposal is not in compliance with the Parking Ordinance, but does provide substantially more on-site parking than what currently exists. However, access to the parking area is a major safety concern of City staff and ADOT.

Consistency with Community Plan

Consistent as follows:

- designated as commercial on land use map
- compatible with existing topography, vegetation and scenic vistas
- retain and encourage commercial uses which respect existing positive characteristics of the city and its natural environment, and are compatible with adjacent uses

Inconsistent as follows:

- as proposed, adequate site access mitigation measures (left-turn lane and restricted access) have not been provided to the satisfaction of City staff and ADOT

Compliance with Conditional Use Permit Requirements

Conditional use permit is required for expansions of nonconforming uses and outside sales/display areas. If adequately conditioned to address safety concerns of City staff and ADOT, staff does not find the CUP request inconsistent with findings set forth in Section 208.07 of the Interim Zoning Ordinance.

RECOMMENDATION

The current use of the southern one-half of the subject property, specifically the 5,000 square foot outside sales/display area has been the subject of City zoning enforcement actions for approximately three years. In the spirit of trying to achieve voluntary compliance with ordinance requirements wherever possible, City staff has exercised great patience and tolerance with the owners of Son Silver West to achieve a reasonable solution to the alleged violations alternative to Court enforcement.

1 - MY SHEET

The applicant is pursuing an avenue of administrative relief (CUP request) which, if approved, would allow for the continued use of the disputed display area and the construction of a new parking area. Staff supports this approach contingent upon the provision of access to the site in a manner that addresses the safety concerns of the City Engineering and Police Departments, as well as the requirements of the Arizona Department of Transportation. Staff therefore recommends approval of case number CUP 92-3 (site plan #2) based on substantial compliance with Ordinance requirements, applicable sections of the Community Plan and conditional use permit findings and subject to the following conditions of approval:

- view 2.
1. Highway 179 shall be improved as specifically required by the Arizona Department of Transportation.
 2. Encroachment permits shall be obtained from ADOT for all Highway 179 improvements.
 3. All ADOT required improvements to Highway 179 shall be completed to the specifications of ADOT and improvements to the new on-site parking area to the specifications of the City Engineer within one year of conditional use permit approval. The new parking area shall not be utilized for customer or employee parking until all above-referenced improvements are satisfactorily completed.
 4. Prior to grading permit issuance, grading and drainage plans for the proposed changes to the drainage path on the property shall be approved by the City Engineer.
 5. The outside sales/display area shall be ~~completely enclosed~~ ^{September} and screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.
 6. The parking lot directional sign shall be installed in accordance with the City's Sign Regulations and shall be consistent with the design theme of the other wood signs at the gallery.
 7. The existing mercury vapor light located in the display area shall be changed to a sodium type and shielded so the illumination is confined to the subject property boundaries.
 8. All other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.

- 10⁹. Adequate screening of the parking lot along the southern boundary of the subject property shall be provided to the specifications of the Director of Community Development.
- 11 10. Existing trees located within the proposed parking area shall ~~not be removed and shall be~~ incorporated into the new parking lot. *be maintained and*

In the event such trees do not survive due to vehicular compaction, replacement with trees of a comparable size and type shall be required.

~~12 THE INDIVIDUAL PARCELS~~
ASSET

12. SEE TOM'S CONDITION ON COMBINATION OF PARCELS

Sedona, Coconino County, Arizona

PLAN MAP
of the
INCORPORATED SUBDIVISION

BROKEN ARROW

Scale 1"=200'

Revised May 1981
Compiled by R. A. Lindberg, Feb. 5, 1980

(Broken Arrow Heights)

5:31

BROKEN ARROW WEST
(West of Hwy. 179)

(Doodlebug No. 2)

Pine Drive

Painted Canyon Drive

Highway 179

Bowstring Drive
Arrow Drive
(Levee)
(Levee)
Private Drive

Bowstring Drive

High Cloud Trail

Morgan Road

Paramount Drive

Pilón Court

(Broken Arrow Vista)

BROKEN ARROW ESTATES
(East of Hwy. 179)

North



DEVELOPED RESIDENTIAL LOT

UNDEVELOPED RESIDENTIAL LOT

RESIDENTIAL LOTS (1-7); One-Room Business Allowable

BUSINESS LOTS (28-44)

VOTE:

SIX VOTES IN FAVOR, ~~NONE~~ OPPOSED -- MOTION UNANIMOUSLY
CARRIED.

AGENDA ITEM NUMBER SEVEN WAS CONDUCTED AS A PUBLIC HEARING

7. DISCUSSION/POSSIBLE ACTION REGARDING A REQUEST FOR A
CONDITIONAL USE PERMIT (CUP) TO ALLOW FOR THE EXPANSION OF A
NON-CONFORMING USE (THE SON SILVER WEST GALLERY) AND TO ALLOW
FOR OUTSIDE SALES AND DISPLAY ITEMS. IN ADDITION TO THE
OUTSIDE SALES AND DISPLAY AREA, THE CONSTRUCTION OF A CUSTOMER
PARKING LOT IS ALSO REQUESTED.

Applicant: William and Linda Rose Robson
Son Silver West Gallery

Case Number: CUP 92-3

THE SUBJECT PROPERTY IS LOCATED ALONG THE WEST SIDE OF SR 179
APPROXIMATELY TWO HUNDRED (200') FEET SOUTH OF THE SR 179/
ARROW DRIVE INTERSECTION. THE SUBJECT SITE IS IDENTIFIED AS
ASSESSOR'S PARCEL NUMBERS 401-31-012 AND 013.

Vice-Chair McAllister declared a Conflict of Interest and left
the dais.

Staff's Presentation

Staff -- Mr. O'Brien:

- Summarized the request, as well as the background, history, and previous levels of review, as outlined in Staff's Report to the Commission dated September 15, 1992 (attached to original minutes).
- Staff addressed comments and concerns of the Commission from the Commissions Study Session of September 10, 1992.
- Staff recommended approval.
- Two alternative site plans have been submitted for consideration.

Discussion -- Commission and Staff:

- Current parking requirements won't be met if alternate #2 is completely adhered to.
 - Staff felt the property was being made less deficient and closer to compliance.

- Previous public comment, pro and con, since 1991, has been substantial and should be considered.
 - Pro: 3 letters and a petition with 260 signatures, substantially non-resident signatures (attached to original minutes).
 - Con: 22 letters from residents and a petition with 120 resident signatures (attached to original minutes).
- Correct Staff Report, change applicable wording to Broken Arrow instead of Broken Arrow Heights.
- Discussion regarding:
 - The relationship of parking to the usable space.
 - ADOT's role in the approval process relative to the jurisdiction of the Commission.

Staff:

- Staff recommendations could be changed by the Commission.

City Attorney:

- Would be concerned if a property was conditioned so that it couldn't perform because of being caught between two jurisdictions.

Discussion -- Commission and Staff:

- ADOT has jurisdiction over the state highway.
 - ADOT's position has not changed since the Commission's last hearing on July 7th.
 - Letter from ADOT dated August 26, 1992 (attached to original minutes).
 - A left-turn lane isn't required, but is strongly encouraged.
- Discussion regarding the relationship between parking needs and retail square footage needs.
 - The Commission could waive or enforce parking requirements.
- Explanation of Staff's methodology used to determine parking specifications and recommendations.

-- Ramifications of the ratios used.

- Concern expressed regarding the calculation of square footage based on the outside display area relative to the site plan distributed this evening for Commission consideration.
- Further concern regarding the discrepancies between the maps, the current proposals, and the dates on the various plans.

-- No indication of changes has been made from the Commission's previous hearing.

- Staff's report contains no reference to the existing parking and graveled area occurring across the street.

-- The area isn't a legally established parking area.

Applicant's Presentation

Mr. Jack Dempsey, Applicant's Attorney:

- The issue isn't expansion; it's preservation. Nothing will be expanded under the Conditional Use Permit.
- Issues of expansion and the closure of a business are not being considered. A lot of misunderstanding follows the project. The Commission isn't conducting a full public hearing.
- Explanation of CC&R provisions relative to use of the subject property.

-- Designated as business lots in 1955.

- Explanation of the history of the business, the perception surrounding the history, and previous procedural approvals granted by the County and City.
- Concerned with the timing of the requirements by the City relative to ADOT improvements.
- Re-zoning versus a Conditional Use Permit.

Discussion -- Commission and Mr. Dempsey:

- Three hundred plus signatures were obtained on a petition supporting issuance of a Conditional Use Permit.
- Expansion of the property, if any, took place in the 1960's and 1960's, prior to Incorporation.

- Coconino County Assessor records erroneously show the property as vacant in 1986.
- Discussion and explanation regarding the City's code enforcement efforts relative to the subject property.
- In 1989 the City issued a citation for expansion.
- The request for a Conditional Use Permit would grant administrative relief.
- Neither the plat nor the CC&R's have been amended since their recordation in 1955.
- Concern expressed regarding the existing family residence and the possibility of it being converted to additional commercial space.

Mr. Bill Robson, Applicant and Owner:

- The existing residence will always be a home; there will be no retail conversion.

THE PUBLIC HEARING WAS OPENED.

Frank Stobinski, 400 Fox Road -- Sedona, Arizona:

- Supported the Applicant's request.
- Employee of Son Silver West and resident of the City. The request should be approved for the sake of the employees working for the Applicants.

Stephen Stobinski, 378 Fox Road -- Sedona, Arizona:

- Supported the Applicant's request.
- Five year resident of the City; felt the subject property looked great.
- Suggested the Commission be fair and support the local business. Sales Tax revenues are generated by business.

Diane Harvey, 1355 Lee Mountain Road -- Sedona, Arizona:

- Registered written support for the Applicant's request; didn't orally address the Commission.

Chuck Bemas, 1569 East Ramar -- Riviera, Arizona:

- Questioned the Commission on the ongoing SR 179 Corridor Study relative to property owned adjacent to the subject property.

Recorder's Note: Steve Swanson, City Engineer, updated Mr. Bemas on the nature and results to date of the Study; further contacts for information were given.

Fred Dolinter (card not submitted for reference), Hohokom Circle -- Sedona, Arizona:

- Supported the Applicant's request.
- Fifteen year resident of Sedona.
- The gallery has been operating since 1977 and has been improved since the Robson's ownership.
- The gallery isn't the only SR 179 existing business.

Marc Avery, 930 Jordan Road -- Sedona, Arizona:

- Registered written support for the Applicant's request; didn't orally address the Commission.

Robert Shields (card not submitted for reference), Cathedral area -- Sedona, Arizona:

- Supported the Applicant's request.

Maleese Black, 324 Bowstring Drive -- Sedona, Arizona:

- Opposed to the request.
- Member of the Broken Arrow Homeowner's Association.
- The subdivision's developer didn't look to the future in designing and designating the lots as a business nature.
 - Correct the wrongs of the past, allow improvement to move forward.
- Existing traffic hazards and concerns are substantially greater than stated.
- The City should wait for completion of the SR 179 Corridor Study before making further traffic commitments to the area.

- The La Galleria had no outdoor display.

Bertha Longtin, 335 Bowstring Drive -- Sedona, Arizona:

- Registered written opposition for the Applicant's request; didn't orally address the Commission.

Katheryn Shrode, 238 Paramount, PO Box 1949 -- Sedona, Arizona:

- Opposed to the request.
- Expressed concern regarding the appearance of the subject property, existing traffic hazards, access issues, and increased traffic problems.

Bob Wilson, 38 Badger Drive -- Sedona, Arizona:

- Favored the Applicant's request.
- The Mexican appearance of the gallery looks nice.
- Suggested a fence be erected if the Commission endorsed alternate #2.
- Problems should be solved on the basis of existing problems of today; not the past.
- The property's history is irrelevant.
- Additional parking areas should be provided.

THE PUBLIC HEARING WAS CLOSED.

MOTION:

COMMISSIONER PEPPER MOVED THE COMMISSION ADJOURN TO AN EXECUTIVE SESSION TO OBTAIN LEGAL ADVICE AFTER A TEN-MINUTE RECESS. SECOND BY COMMISSIONER ROBERTS.

VOTE:

FIVE VOTES IN FAVOR, NONE OPPOSED -- MOTION UNANIMOUSLY CARRIED.

Recorder's Note: After a ten-minute recess, at about 8:00 p.m., the Commission adjourned to an Executive Session in the Director's Office, Department of Community Development.

The Commission returned to open session at 8:30 p.m.

City Attorney:

- Met in Executive Session to discuss concerns of the Commission and possible methods of mitigation through revisions to Staff recommended Conditions of Approval as well as additional Conditions.
- Under penalty of law, discussions during an Executive Session are confidential.

Discussion -- Commission:

- Suggestion that the Applicant consider lowering the park requirements by decreasing the outdoor display space and converting existing indoor residential space instead.
- Discussion regarding the ownership of the subject property, specifically the different owners of two individual lots, and the terms of the agreement allowing display.
 - The Applicant was willing to commit to never selling the subject property.
 - The use of the property runs with the land.
- Discussion regarding designation of the subject property in the Community Plan.
 - Existing commercial uses are intended to be reflected.
- The Applicant's rezoning application was withdrawn because increased commercial activities was not the intent.
- Issuance of a Conditional Use Permit shouldn't be construed as a municipal endorsement of commercial sprawling.
- Conditional Use Permits don't reflect changes in zoning or the Community Plan.
- Discussion regarding Staff's interpretation of Community Plan provisions relative to land-use boundaries.
- Discussion regarding the terms and provisions of the CC&R's.
 - The City cannot enforce CC&R's.

MOTION:

COMMISSIONER ROBERTS MOVED APPROVAL OF CASE NUMBER CUP 92-3, SITE PLAN #2, BASED ON SUBSTANTIAL COMPLIANCE WITH ORDINANCE REQUIREMENTS, APPLICABLE SECTIONS OF THE COMMUNITY PLAN, AND CONDITIONAL USE PERMIT FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL AS AMENDED (amendments are shown below).

Add a new Condition #1 and re-number accordingly. Number 1 to read:

1. Uses and physical improvements on the subject property shall not exceed those as characterized in Staff's Report dated September 15, 1992 and as shown on the site plan, and as reviewed and approved by the Planning and Zoning Commission.

Re-number original #1 to #2, and change to read:

2. The Applicant shall be responsible for Highway 179 improvements as specifically required by the Arizona Department of Transportation.

Re-number original #3 to #4, and delete the last sentence, to read:

4. All ADOT required improvements to Highway 179 shall be completed to the specifications of ADOT and improvements to the new on-site parking area to the specifications of the City Engineer within one year of Conditional Use Permit approval.

Re-number original #5 to #6, and change to read:

6. The outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.

Re-number original #10 to #11, and change to read:

11. Existing trees located within the proposed parking area shall be maintained and incorporated into the new parking lot. In the event a tree doesn't survive due to vehicular compaction, replacement with trees of a comparable size and height shall be required.

Add a new condition, to read:

12. Individual parcels shall be combined into one parcel.

SECOND BY COMMISSIONER GUNNING.

ROLL CALL VOTE:

FOUR VOTES IN FAVOR, ONE (SOBOLOFF) OPPOSED -- MOTION CARRIED.

Discussion:

- Though the Conditional Use Permit isn't an ideal solution to existing problems, the Commission should use its energies productively.

Vice-Chair McAllister returned to the dais.

*. REPORTS/ANNOUNCEMENTS -- REPORT FROM THE DIRECTOR ON APPEAL TO CITY COUNCIL REGARDING EL MUNDO MAGICO GALLERY (Continued from Agenda Item #4).

Staff -- Mr. Schafer:

- Requested by Chairman Rawlins, September 10, 1992 memo (attached to original minutes) to answer questions relative to the determination by the Commission, and subsequent appeal to the Council, that a Public Hearing would be required for design review approval.

Recorder's Note: Bulleted questions were posed by the Chairman in his memorandum -- Staff's response to the questions follow.

- Article 17, Commission's Rules and Procedures. What instrument was being appealed?
 - No instrument was appealed; an action was appealed.
 - The Commission has the authority under design review provisions to decide whether a public hearing should be required or whether Staff should handle smaller projects.
 - The Ordinance provides for appeal of any decision on design review applications.
- Why was the Commission not advised of the appeal?
 - It's never been Staff's practice to advise of pending appeals.
 - Staff focus is on the party to whom the appeal is made to.
 - Staff could provide courtesy notification in the future.

**4. CUP 92-3 Conditions of Approval and June 7, 1994 Agreement
between the City and the Robsons**



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
T DD (602) 282-3113
FAX (602) 282-7207



September 21, 1992

William and Linda Rose Robson
Son Silver West Gallery
1476 Highway 179
Sedona, AZ 86336

RE: Case number CUP 92-3

Dear Mr. and Mrs. Robson:

On September 15, 1992, the Planning and Zoning Commission approved case number CUP 92-3 subject to the attached conditions of approval.

As the applicant in the above matter, your signature is required at the bottom of this letter confirming your agreement to comply with the attached conditions. Please sign and date in the space provided and return this letter and the conditions to the Department of Community Development as soon as possible.

Sincerely,

John P. O'Brien

John P. O'Brien, Associate Planner
Department of Community Development

Enclosure

CONFIRMATION

[Signature]
Applicant

October 20, 1992
Date

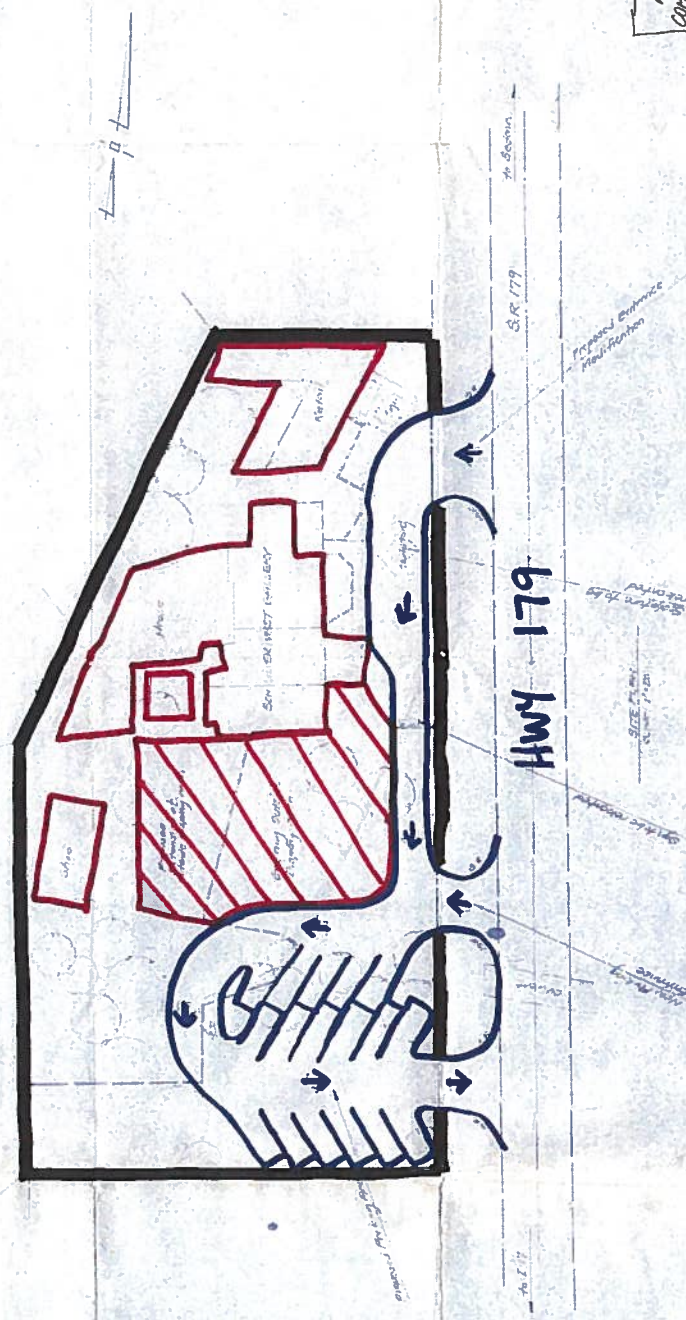
**CONDITIONS OF APPROVAL AS APPROVED BY THE
PLANNING AND ZONING COMMISSION FOR CASE NUMBER CUP 92-3
SON SILVER WEST GALLERY**

1. Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2).
2. The applicant shall be responsible for the provision of Highway 179 improvements as specifically required by the Arizona Department of Transportation.
3. Encroachment permits shall be obtained from ADOT for all Highway 179 improvements.
4. All ADOT required improvements to Highway 179 shall be completed to the specifications of ADOT and improvements to the new on-site parking area to the specifications of the City Engineer within one year of conditional use permit approval.
5. Prior to grading permit issuance, grading and drainage plans for the proposed changes to the drainage path on the property shall be approved by the City Engineer.
6. The outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.
7. The parking lot directional sign shall be installed in accordance with the City's Sign Regulations and shall be consistent with the design theme of the other wood signs at the gallery.
8. The existing mercury vapor light located in the display area shall be changed to a sodium type and shielded so the illumination is confined to the subject property boundaries.
9. All other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.
10. Adequate screening of the parking lot along the southern boundary of the subject property shall be provided to the specifications of the Director of Community Development.
11. Existing trees located within the proposed parking area shall be maintained and incorporated into the new parking lot. In the event such trees do not survive due to vehicular compaction, replacement with trees of a comparable size and type shall be required.
12. Individual parcels shall be combined into a single parcel and maintained under common ownership for purposes of operation and maintenance of the authorized uses.

APPROVED BY P-2
 COMMISSION 9-15-92
 SUBJECT TO CONDITIONS
 ALT #2

SHEPARD-WESNITZER INC
 CONSULTING ENGINEERS
 SEDONA ARIZONA
 PHONE (902) 282-1081

SHEPARD-WESNITZER INC CONSULTING ENGINEERS SEDONA ARIZONA PHONE (902) 282-1081	
DATE	9-15-92
BY	P-2
CHECKED	
DATE	



ALTERNATIVE 2



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86339
(602) 282-3113
TDD (602) 282-3113
FAX (602) 282-7207

AGREEMENT

This document sets forth the terms and conditions of an agreement between the City of Sedona and the owners of the Son Silver West Gallery.

WHEREAS, Son Silver West Gallery, located at 1476 Hwy. 179 in Sedona, Arizona is a nonconforming business use in a C-RS-18,000 zone (Single Family Residential); and

WHEREAS, the nonconforming aspects of said use were expanded in 1989 without benefit of approval of a conditional use permit, as required by Section 204.01 of the City of Sedona Interim Zoning Ordinance; and

WHEREAS, an "after the fact" conditional use permit was approved by the Planning and Zoning Commission for the City of Sedona on September 15, 1992; and

WHEREAS, in association with the granting of the conditional use permit, certain conditions of approval were acknowledged and agreed to by the owners of Son Silver West Gallery, Mr. and Mrs. Bill Robson, on October 20, 1992; and

WHEREAS, certain site improvements associated with said approval were not completed, as required by ordinance, within one year from the date of the conditional use permit approval; and

WHEREAS, the owners of Son Silver West Gallery, Mr. and Mrs. Bill Robson, have requested additional time in which to complete said improvements;

Now, therefore, the following **AGREEMENT** represents the terms and conditions under which the noted improvements are to be provided.

Parking lot screening and landscaping (condition 10 of the Planning and Zoning Commission's approval on September 15, 1992)

- The south and east sides of the parking lot shall be screened with earthen berms and landscaped to the satisfaction of the Director of Community Development no later than July 1, 1994.

Mercury vapor lighting (condition 8)

- All mercury vapor lighting shall be eliminated no later than August 1, 1994.

Other lighting (condition 9)

- Parking lot lighting shall be installed no later than August 1, 1994. All lighting shall be shielded to the satisfaction of the Director of Community Development no later than August 15, 1994.

Display area screening (condition 6)

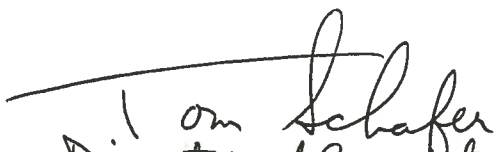
- Earthen berms shall be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994.
- Screen landscaping shall be provided within the earthen bermed area along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than October 1, 1994.
- Additional visual screening of all outside display areas by use of a combination of earthen berming, landscaping and rustic fencing shall be completed to the satisfaction of the Director of Community Development no later than October 1, 1994.

Improvements to Hwy. 179 (condition 4)


- All required improvements to Hwy. 179 shall commence no later than April 1, 1995, shall be diligently pursued and shall be completed no later than July 1, 1995.

In consideration of the fact that this agreement assumes public use of the newly established parking lot area on the south side of the property prior to the completion of Hwy. 179 improvements as required by the Arizona Department of Transportation, the owners hereby agree to hold harmless and indemnify the City of Sedona against all costs, damages, penalties, expenses and fees (including court costs and attorney's fees), from any and all liability claims that may result from, arise out of or relate to vehicular use of the site ingress/egress prior to completion of such improvements.

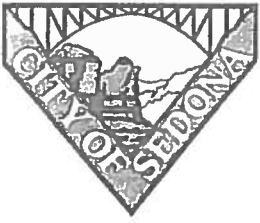
The agreement is hereby entered into as of June 7 1994
by parties so authorized as signed below


Tom Schafer
Director of Community Development
City of Sedona

(2)


Son Silver West Gallery
Frida Rose / Street
William B. Corbrow

**5. Other Notice of Violations and Issues including the October 8,
2014 NOV**



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
T DD (602) 282-3113
FAX (602) 282-7207

February 11, 1993

Mr. Bill Robson
1476 Highway 179
Sedona, AZ 86336

RE: Case number CUP 92-3 - Son Silver West Gallery

Dear Bill:

On September 15, 1992, the Planning and Zoning Commission approved the above-referenced case subject to compliance with several conditions of approval. Condition #4 stipulated that required ADOT improvements to Hwy. 179 and the required parking lot improvements be completed by September 15, 1993. Condition #6 required that the outside display area be screened. Condition #8 required that the existing mercury vapor light located in the display area be changed to a sodium type and appropriately shielded.

It appears that no progress is being made toward compliance with these or any of the 12 required conditions associated with case number CUP 92-3. Please keep me informed as to when you intend to comply with the conditions of the CUP. Non-compliance with the conditions could result in suspension and revocation of the CUP. I can be reached at 282-1154 if you would like to discuss this matter.

Sincerely,

John P. O'Brien, Associate Planner
Department of Community Development



ARIZONA DEPARTMENT OF TRANSPORTATION

HIGHWAYS DIVISION - Flagstaff District

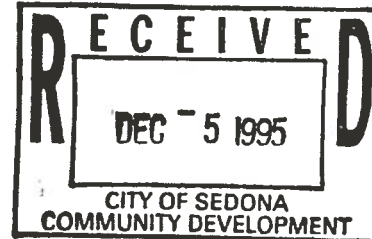
1801 South Milton Road - Flagstaff, Arizona 86001-6387



FIFE SYMINGTON
Governor

THOMAS G. SCHMITT
State Engineer

LARRY S. BONINE
Director



November 29, 1995

Bill and Linda Rose Robson
Son Silver West Gallery Inc.
1476 Highway 179
Sedona AZ 86336

Dear Mr. and Mrs. Robson

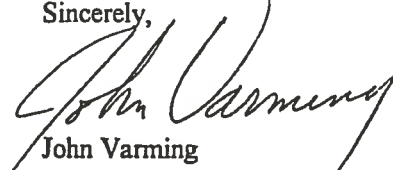
I am contacting you regarding the recent construction of asphalt paving within the State Highway Right of Way in front of Sun Silver West Gallery. We previously discussed this situation by telephone and I want to formally address the status of these improvements.

The plans that you submitted with the permit application are part of the approved permit. These plans were not followed during the construction of the pavement widening, consequently the paving encroaches into the drainageway. This will cause the runoff to remain on the roadway creating a potential hazard. The thickness of the new pavement is 2 1/2 inches. The minimum thickness requirement is 4 inches. Your contractor did not sawcut the edge of the existing AC pavement to provide a vertical edge for the new paving to bond to. The one inch lip where the new pavement was layed on the existing pavement will hamper snow removal and presents a hazard to the snowplow and operator.

Since the new pavement has been placed there have been numerous vehicles parked on it. This contributes to the congestion of the area and does not meet the safety standards. The construction of your parking lot was supposed to accommodate your customer's vehicles and eliminate parking within the ADOT highway right of way.

You have 30 days to bring the improvements up the requirements of the permit or remove said improvements. If the deficiencies are not corrected within this time ADOT will remove the paving and bill you for the costs. The 30 days begins upon receipt of this letter. Call me at (520) 779-7553 if you have any questions.

Sincerely,


John Varming
Permit Supervisor

certified mail

c: John O'brien
Ervin L. Boren



ARIZONA DEPARTMENT OF TRANSPORTATION

HIGHWAYS DIVISION - Flagstaff District

1801 South Milton Road - Flagstaff, Arizona 86001-6387



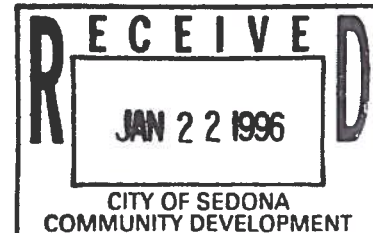
FIFE SYMINGTON
Governor

THOMAS G. SCHMITT
State Engineer

LARRY S. BONINE
Director

January 16, 1996

Mr. Bill Robson
Son Silver West Gallery
1476 Highway 179
Sedona, Arizona 86336



Dear Mr. Robson,

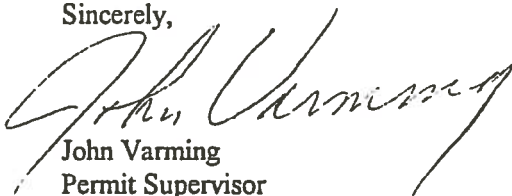
I have received your letters dated December 19, 1995 and January 6, 1996 requesting an extension of time to correct the defects in the asphalt paving placed by Luk-con Construction for you. This work was done under the authority of ADOT Encroachment Permit # 59955, but does not meet the requirements of the permit. The new paving combined with the open gate serves as an attractive and convenient parking area for your customers. This parking is contrary to state law and the provisions of encroachment permit.

The immediate elimination of Son Silver West Gallery customer parking within the highway right of way is imperative. The granting of the time extension is dependent upon the satisfactory elimination of the parking problem including keeping the gate closed.

The time to correct all defects and deficiencies is extended to April 15, 1996. All anticipated changes from the approved plans, which are part of the original permit, must be reviewed and approved by ADOT prior to the commencement of the work. The conditions mentioned in my previous letter shall also be addressed in this time period.

ADOT reserves the right to remove any part of these facilities if it is determined that they are hazardous to the highway users.

Sincerely,


John Varming
Permit Supervisor

c: Ervin L Boren
City of Sedona
John Wesnitzer



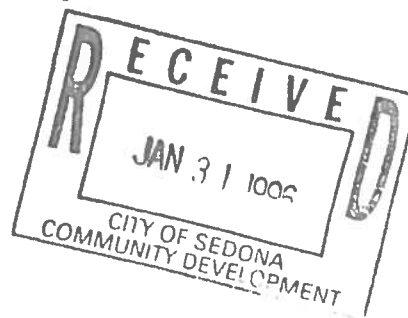
ARIZONA DEPARTMENT OF TRANSPORTATION

HIGHWAYS DIVISION - Flagstaff District

1801 South Milton Road - Flagstaff, Arizona 86001-6387

FIFE SYMINGTON
GovernorTHOMAS G. SCHMITT
State EngineerLARRY S. BONINE
Director

January 30, 1996

Mr. Bill Robson
Son Silver West Gallery
1476 Highway 179
Sedona AZ 86336

Dear Mr. Robson,

My January 16th letter to you granted your request for an extension of time to correct defects in paving done by your contractor. This extension was granted contingent upon the elimination of parking and closure of the gate by you. Parking in the ADOT right of way continues to be a potential hazard. I am therefore resinding the extension and notifying you that ADOT will remove the paving and re-establish the drainage ditch as soon as it can be scheduled. You will be billed for all of the costs to do this work.

Sincerely,

John Varming
Permit Supervisor

c: Ervin L Boren
Tom Shafer
John Wesnitzer

Post-it® Fax Note	7671	Date	01-30	# of pages	1
To	TOM SHAFER				
From	JOHN VARMING				
Co./Dept.					
Phone #	779 7553				
Fax #	282-7751				

FYI



DEPARTMENT OF COMMUNITY DEVELOPMENT

Development Services Division

104 Road Runner Drive
Sedona, Arizona 86336

Tel. : 928-204-7114

Fax: 928-204-7124

TDD: 928-204-7102

jwindham@sedonaaz.gov

January 11, 2006

Mr. Bill and Mrs. Linda Rose Robson
1476 Highway 179
Sedona, AZ 86336

Linda Rose Robson, Statutory Agent
Son Silver West Gallery, Inc
1476 Highway 179
Sedona, AZ 86336

NOTICE OF VIOLATIONS AND SUPENSION OF CONDITIONAL USE PERMIT CUP 92-03

Dear Mr. and Mrs. Robson:

Our office has received complaints regarding the following properties owned by you and located within the Sedona city limits:

- (1) Son Silver West Gallery - tax parcel 401-31-012A
- (2) A vacant residential property - tax parcel 401-31-011
- (3) Your single-family residence located at 61 Arrow Drive - tax parcel 401-31-016

Thank you for meeting with John Egan and Jim Windham on December 21, 2005 at your business Son Silver West Gallery, when we discussed issues raised in the complaint letter of December 12, 2005. A copy of that letter was provided to you from our office on December 22, 2005. This letter outlines each property listed above with the code violations we observed, time-lines for your compliance, enforcement actions for non-compliance and any appeal rights you may have.

Please refer to the following information regarding those properties:

Son Silver West Gallery - Tax Parcel 401-31-012A

A Conditional Use Permit (CUP 92.3) was issued to this property on September 15, 1992 and was subject to the attached conditions of approval signed by you on October 20, 1992.

Condition #1 states, “ *Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission*”.

The City of Sedona believes you are in violation of CUP 92-3, the Sedona Land Development Code, and the Sedona Building Code and, it is our opinion that you have changed the character of use on this property, as described in the September 15, 1992 staff report, based on the following:

- An addition was built to the storage building located along the southwest property lines without the required building permit or Sedona Fire District approval, and was constructed within three feet and six inches of the rear property line.
- A storage rack system, approximately fifteen feet high by twelve feet long adjacent to your southern storage building, was erected without the required building permit and Sedona Fire District approval.
- An information booth for an off-site resort is in operation in the parking lot area.
- A section of the required screen/landscaping wall along the south end of the parking lot area has been removed.

Please be advised that per the Sedona Land Development Code, Section 402.10, "Revocation of a Conditional Use Permit", Subsection E.1, your CUP 92-3 is hereby suspended for failure to remain in compliance with your conditions of approval. Although this suspension allows continued operation of your business, you are hereby directed to comply with the following items by February 28, 2006:

- Remove the non-permitted addition to the storage building.
- Remove the non-permitted storage rack system.
- Remove and discontinue the resort information booth.
- Replace the required screen/landscaping wall along the southern boundary of the parking lot to the satisfaction of the City of Sedona Director of Community Development.

Failure to address these items by February 28, 2006, may result in the scheduling of formal proceedings with the Sedona Planning and Zoning Commission in order to conduct a revocation hearing per the Sedona Land Development Code section 402.10.E.2. The City of Sedona may also file formal charges in the Sedona Magistrate Court for violations of the Sedona Building Code and Land Development Code.

An Adjacent Vacant Residential Property - Tax Parcel 401-31-011

The following violations of the Sedona Land Development Code have been observed on this property:

- Commercial outdoor storage on this undeveloped residential property; section 902.03.A.
- Use of vacant residential property for the storage and parking of commercial vehicles and trailers; section 902.01.C & 902.03.B.
- Prohibited ingress and egress to a commercial business through an undeveloped residential property; section 605.02.A.
- Storage of cut-up tree limbs and brush; section 909.B.
- Creating a non-approved access for customer parking on residential property; section 605.02.A.
- Creating a non-approved driveway cut/grading with out a required grading permit; section 805.

You are hereby directed to remove the outdoor storage from this property, discontinue the storage and parking of commercial vehicles, and discontinue accessing your commercial business, "Son Silver West Gallery" through this undeveloped residential property, and to control and prohibit customers from parking on this vacant lot and obtain a grading permit or return the cut area back to pre-graded condition by February 28, 2006. Failure to comply may result in filing enforcement actions through the Sedona Magistrate Court.

Your Single-Family Residence - 61 Arrow Drive - Tax Parcel 401-31-016

- It has been observed that your property located at 61 Arrow Drive is being used for the parking of your *Son Silver West Gallery* employees' vehicles. This is a violation of the Sedona Land Development Code, Section 605.02.
- Non-compliant storage of an unscreened trailer in the front yard area.

You are hereby directed to discontinue allowing the employees of your commercial business to park their vehicles at your place of residence, located at 61 Arrow Drive. Your trailer needs to be parked or stored in the rear or side yard and screened from adjacent property views, by use of a fence or wall. Compliance must be met by February 28, 2006. Please be advised that you will need to obtain a building permit if you choose to construct a new fence or screen wall. Failure to comply with this directive may result in filing enforcement actions through the Sedona Magistrate Court.

The following are additional issues for your consideration:

- In accordance with your CUP 92-3, regarding the approval and character of use outlined in the September 15, 1992 staff report, the existing 1950 square foot single family residence located on tax parcel 401-31-012A is to always remain as *single family use* and shall not be converted to *office or storage use*. If this residence has been changed or the use of it converted, you will likewise, be in violation of your conditions of approval.
- The piles of black plastic bags and pile of packing material located behind the storage racks are unsightly and unscreened. This area must be cleaned up and the bags and packing material disposed of in a proper manner.
- Please be advised that the City of Sedona has contacted the Arizona Department of Transportation regarding the customer access to your vacant lot from Highway 179. They have indicated that this has not been approved. They will address this issue with you.

You have several appeal rights available in regard to the above properties and the noted violations.

If you wish to discuss them, please contact Mr. John O'Brien, Director of Community Development for the City of Sedona at 928-204-7114.

As per our discussion, you indicated that you are willing to bring your properties back into compliance and address these issue in a cooperative manner. In this regard, the City of Sedona will conduct an interim progress/compliance inspection on February 15, 2006. We look forward to resolving this matter and working with you to achieve compliance. If you have any specific questions regarding compliance issues, we are available to meet with you for discussion.

Sincerely,

Jim Windham, Development Services Supervisor
Department of Community Development

John O'Brien, Director
Department of Community Development

cc: City Attorney
Attachments



DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division

104 Road Runner Drive
Sedona, Arizona 86336

Tel. : 928-204-7114
Fax: 928-204-7124
TDD: 928-204-7102
jwindham@sedonaaz.gov

February 24, 2006

Mr. Bill and Mrs. Linda Rose Robson
1476 Highway 179
Sedona, AZ 86336

Linda Rose Robson, Statutory Agent
Son Silver West Gallery, Inc
1476 Highway 179
Sedona, AZ 86336

**AMENDMENT TO NOTICE OF VIOLATION DATED JANUARY 11, 2006 REFERENCE
SUSPENSION OF CONDITIONAL USE PERMIT CUP 92-03**

Dear Mr. and Mrs. Robson:

Thank you for meeting with John O'Brien and myself on February 16, 2006 regarding our Notice of Violation (NOV) and Suspension of Conditional Use Permit CUP 92-03 issued to you on January 11, 2006.

As we discussed at our meeting, several items needed clarification from our office regarding your verbal responses to the January 11, 2006 NOV. This letter will serve as that clarification and will also serve as an amendment to the January 11, 2006 NOV.

Son Silver West Gallery- Tax parcel 401-31-012A

- Since you have not provided any documentation from Tom Schafer, previous Director of Community Development, regarding the "break" in the screen wall requirement per CUP92-03, conditions of approval #10, you are hereby directed to reinstall the solid screen wall in the same manner as the existing screen wall, to extend the full length of the southern property boundary of the parking lot area. Please be advised that you must submit a required building permit application for this work by February 28, 2006. You will then have 30 days from the date of issuance of the building permit to complete this work. This issue will be re-evaluated as part of the future SR 179 expansion project.
- The portable toilet must be removed from this property and discontinue its use by March 10, 2006. Your conditional use permit, CUP92-03 does not allow for the use of portable toilets on your property.
- The resort information booth use must be removed from the property by February 28, 2006. Your conditional use permit, CUP 92-03 does not allow for the use of a resort information booth on your property.

- The demolition permit application has been received by our office and will be issued by February 28, 2006. A condition of approval with a compliance date of June 15, 2006 to remove the non-permitted addition to the southern storage shed and remove the storage rack system will be attached to this permit, as agreed.

An adjacent vacant residential property- tax parcel 401-31-011

- Based on a February 24, 2006 site inspection by J. Andy Dickey, P.E., Associate Engineer, the non-approved driveway cut/grading you performed on this property is a violation of the Sedona Land Development Code, Section 805. You must refill, compact and return this area to the original natural grade line and condition by March 30, 2006.
- You must discontinue parking, storing, or using this residential property for parking, accessing your commercial property or any other non-approved use by February 28, 2006.

Please provide your response to the use of the 1950 square foot single family residence by February 28, 2006, as you agreed.

Please be advised that your conditional use permit has specific conditions of approval with which you must comply. You are not allowed to add uses, add structures, remove required screening, or to commence any other such activities without *first* amending your use permit or by obtaining approval from the City of Sedona. Your statement to us that you need to expand your business is irrelevant in regard to your CUP conditions of approval. Your failure to address the above stated actions by the stated dates will result in any legal enforcement actions allowed by law.

You are also advised that the remaining items listed on the Notice of Violation, dated January 11, 2006, remain in affect.

We look forward to resolving this matter and working with you to achieve compliance. If you have any specific questions regarding this amended Notice of Violation or compliance issues, please contact us at the above listed address or numbers.

Sincerely,

Jim Windham, Development Services Supervisor
Department of Community Development

John O'Brien, Director
Department of Community Development

cc: City Attorney

Attachments

acm:JW



CP
update
SR 179
(Son Silver
West)

May 2, 2008

Mr. Rio Robson
Son Silver West
1476 Highway 179
Sedona, AZ 86336

RE: Temporary use of your southern lot, 401-31-011 and permanent parking lot project

Dear Rio,

This letter regards your proposal to work with Southwest Asphalt and Paving (SAP) to turn your southern lot, 401-31-011 into a temporary staging area for the SR 179 construction project, and your future plans to develop this property as a permanent parking lot for Son Silver West customers.

Southwest Asphalt and Paving may use 401-31-011 as a temporary staging area for the SR 179 construction project provided the property is not used for fuel storage and no trees are removed.

You also propose to develop 401-31-011 into a permanent parking lot for Son Silver West customers. To do so will require approval of a major amendment to the Sedona Community Plan and approval of a rezoning. The City of Sedona will be updating the entire Community Plan starting in 2009. This is expected to be an 18-24 month process. The public would then vote on the Community Plan update sometime in 2011. During the update process, City staff plans to initiate discussion with the entire community regarding acceptable future land uses along the SR 179 corridor, including the Son Silver West property and 401-31-011.

You always have the option to file for a major amendment to the Community Plan and rezoning of 401-31-012A separately from the citywide update. In accordance with Arizona State Law, major amendments to the Community Plan are considered once per year and our next deadline to file an application would be in April of 2009. The Planning and Zoning Commission and City Council would consider the major amendment applications in the summer and fall of 2009. Your zone change application could also be filed at the same time as the major amendment. The filing fee for major amendments is \$1800 plus your share of the public noticing costs, which would run approximately \$8000. Public noticing costs are shared equally amongst all applicants filing for major amendments.

The City prefers to undertake the "future land use discussion" of the entire SR 179 corridor as part of our next citywide Community Plan update rather than take in and process individual requests from each property owner along the corridor. City staff's preference is that you wait for the citywide update so we can look at this issue comprehensively and let the entire community decide the future land uses for the SR 179 corridor. However, if you want to propose a major amendment to the Community Plan on your own, this is your prerogative. In pursuing a major amendment on your own, please understand the Community Development staff would be hard pressed to recommend approval of this individual request given that the citywide update is just around the corner. We prefer to look at the entire corridor comprehensively, rather than on a per property basis.

I hope this gives you the information you need. Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John O'Brien".

John O'Brien, Director
Community Development Department

Cc: Jodie Filardo, Economic Planner
Michael Raber, Senior Long Range Planner

May 19, 2011

Mr. Rio Robson
Son Silver West
1476 Highway 179
Sedona, AZ 86336

RE: ILLEGAL USE OF ASSESSOR'S PARCEL NUMBER 401-31-011

Dear Rio:

This letter is to inform you that you are currently illegally using Assessor's Parcel Number 401-31-011 as a parking lot and outside sales, display and storage of merchandise and equipment associated with the adjacent Son Silver West retail business. The property in question is residentially zoned and does not currently allow your unauthorized expanded use.

I have enclosed a May 2, 2008 letter I sent to you that outlined the steps that are necessary to develop this property as permanent parking for Son Silver West.

Please be advised that you have until June 24, 2011 to remove all parking on this property, including all concrete parking stops. In addition, all display items including, but not limited to, sculpture, construction materials and a covered wagon must also be removed. Failure to remove these items and cease the illegal use on this property by June 24, 2011 will result in formal code enforcement action.

Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,

John O'Brien, Director
Community Development Department

Cc: Jim Windham
John Egan
Nick Gioello

Encl.



102 Roadrunner Drive
Sedona, Arizona 86336
TDD (928) 204-7102
www.SedonaAZ.gov

May 24, 2011

Mr. Rio Robson
Son Silver West
1476 Highway 179
Sedona, AZ 86336

RE: ILLEGAL USE OF ASSESSOR'S PARCEL NUMBER 401-31-011

Dear Rio:

I received your voice mail today and thought it would be easier to respond in writing so you get clear direction and so there are no misunderstandings on how you will need to proceed.

All of the asphalt on this property, except the driveway access from SR 179 connecting to the existing parking lot for Son Silver West, will need to be removed. Based on my inspection, you created a few paved parking spaces and these will need to be physically removed by June 24th. Please contact Jim Windham at 204-7114 and he will meet you on-site and review with you what needs to be removed from the property to bring you into compliance.

We have just begun our citywide Community Plan Update process. During this process, we will focus on specific areas of Sedona and I would anticipate that the SR 179 corridor would be a topic of discussion. I would suggest that you become involved in this process if you propose to redesignate your property for commercial or parking use. I would suggest you contact Mike Raber at 204-7106 or mraber@sedonaaz.gov to get on our mailing list for future Community Plan Update meetings.

Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,

John O'Brien, Director
Community Development Department

Cc: Jim Windham
Mike Raber

August 31, 2011

Mr. Rio Robson
1476 Highway 179
Sedona, AZ 86336

NOTICE OF VIOLATIONS AND SUSPENSION OF CUP 92-3

Dear Rio:

Thank you for meeting with Jim Windham and me at your Son Silver West Gallery property on August 23, 2011. Based on our review of the property, it is apparent that you are in violation of your existing Conditional Use Permit (CUP 92-3) requirements and conditions of approval. We also believe that you are in violation of Land Development Code requirements on your adjacent properties located to the south and west of the Son Silver West Gallery. Additionally, you have constructed several structures on the Son Silver West Gallery property without obtaining building permits.

This letter outlines each property listed below with the code violations we observed and necessary corrective actions.

- (1) Son Silver West Gallery - tax parcel 401-31-012A
- (2) A vacant residential property - tax parcel 401-31-011
- (3) Your single-family residence located at 61 Arrow Drive - tax parcel 401-31-016

Please refer to the following information regarding the above noted properties:

Son Silver West Gallery - Tax Parcel 401-31-012A

A Conditional Use Permit (CUP 92-3) was issued to this property on September 15, 1992 and was subject to several conditions of approval.

Condition #1 states, "Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission".

The City of Sedona believes you are in violation of CUP 92-3, the Sedona Land Development Code, and the Sedona building codes and, it is our opinion that you have changed the character of use on this property, as described in the September 15, 1992 staff report, based on the following:

- You have converted a workshop into a coffee shop without obtaining the proper zoning approvals, building permits and health department permits. **You must discontinue operation of this illegal coffee shop immediately.**
- You have constructed a shade structure behind the coffee shop that encroaches into the required rear yard setback area without obtaining a building permit. **The shade structure must be removed by October 1, 2011.**
- You have constructed and attached a roof system to a rear yard storage building. This roof system encroaches into the rear yard setback area and was constructed without obtaining a building permit. **The roof system must be removed by October 1, 2011.**

- You have constructed a fence along the rear property line without obtaining a building permit. **You must apply for a building permit for the fence by October 1, 2011.**
- You have constructed a fence along the front property line and an open-air roof structure that encloses a vending machine without obtaining building permits. You applied for building permits for these improvements on August 3, 2011 and the approval of these permits is pending.

Please be advised that per the Sedona Land Development Code, Section 402.10, "Revocation of a Conditional Use Permit", Subsection E.1, your Conditional Use Permit (CUP 92-3) is hereby suspended for failure to remain in compliance with your conditions of approval. Although this suspension allows continued operation of the Son Silver West Gallery, with the exception of the illegal coffee shop, which must be discontinued immediately, you are hereby directed to comply with the previously noted items by October 1, 2011.

Failure to address these items by October 1, 2011, will result in the scheduling of formal proceedings with the Sedona Planning and Zoning Commission in order to conduct a revocation hearing of CUP 92-3 per the Sedona Land Development Code section 402.10.E.2. If the Planning and Zoning Commission votes to revoke CUP 92-3, you may be required to close the entire Son Silver West Gallery until you bring the property into compliance with your conditions of approval. Additionally, the City of Sedona may also file formal charges in the Sedona Magistrate Court for violations of the Sedona Land Development Code and Sedona building codes.

An Adjacent Vacant Residential Property - Tax Parcel 401-31-011

This property has been used as a parking lot for the Son Silver West Gallery inconsistent with the property's zoning. The property has also been used for the storage of business related dirt fill material and other storage material. **Use of this property as a parking lot for the Son Silver West Gallery must be discontinued immediately and the dirt fill material and other storage material must be removed by October 1, 2011.**

Failure to comply may result in filing enforcement actions through the Sedona Magistrate Court.

Your Single-Family Residence - 61 Arrow Drive - Tax Parcel 401-31-016

It has been observed that your property located at 61 Arrow Drive is being used for the parking of your Son Silver West Gallery employees' vehicles and for the commercial storage of construction materials related to the Son Silver West Gallery. **This is a violation of the Sedona Land Development Code, Section 605.02, and must be discontinued immediately.**

Failure to comply may result in filing enforcement actions through the Sedona Magistrate Court.

Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,

John O'Brien, Director
Community Development Department

Cc: Mike Goimarac
Jim Windham
Joelle Wirth



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

NOTICE OF VIOLATION

October 8, 2014

Son Silver West Gallery Inc.

Robson Design

C/O Rio Robson

1476 SR179

Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has determined that your businesses, Son Silver West Gallery Inc. and Robson Design are in violation of the Sedona City Code and the Sedona Land Development Code.

Because Son Silver West Gallery Inc. was operating as a commercial business on a single-family residential property (1476 SR 179, parcel #401-31-012A) prior to the City's incorporation in 1988, it is considered grandfathered as a legal non-conforming use. Based on review of City files, in 1992, Son Silver West Gallery representatives filed a Conditional Use Permit (CUP) application for consideration by the Planning and Zoning Commission. Because Son Silver West Gallery expanded its commercial use in 1989 without approval of a CUP, this request was necessary as the interim zoning code at that time did allow for the expansion of a legal non-conforming use with the approval of a CUP. The CUP was approved by the Planning and Zoning Commission on September 15, 1992 subject to conditions of approval.

Subsequent to the approval of the CUP, the City of Sedona changed the non-conforming use section of the Sedona Land Development Code and no longer allowed the expansion of legal non-conforming uses through the approval of a CUP. As explained to you in the past by former Director, John O'Brien, a legal non-conforming use which was lawful prior to the adoption of the City's Land Development Code but is unlawful by the use regulations for the zoning district, may continue only in the manner and to the extent that it existed at the time of the adoption of the Land Development Code. Based on Section 1204 (Non-Conforming Uses) of the Sedona Land Development Code, a grandfathered use cannot expand unless the expansion conforms to the regulations specified for the zoning district in which it is located. When a non-conforming use occupies a building, expanding the use into additional buildings or land areas is prohibited.

Unfortunately, at some point in time, after approval of the CUP in 1992, the Son Silver West Gallery once again expanded beyond its allowable area and without seeking approvals for these expansions. The expansion including the use of three nearby single-family residential properties zoned RS-18b. It is staff's understanding based on visual observations and comments you made during our meeting with you on Tuesday, September 23, 2014 that you are using the single-family residential property at 61 Arrow Drive, (parcel #401-31-016) as a warehouse and manufacturing site for both Son Silver West Gallery Inc. and Robson Design. It was also observed and verified by you that you are using the 365 Bowstring Drive property (parcel #401-31-020) for employee parking and the vacant lot at 1535 SR179, (parcel #401-31-011) for "over-flow" parking for Son Silver West Gallery customers. The existing zoning



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

for these three single-family residential lots (RS-18b) does not allow for these commercial uses. As indicated above, Section 1204 of the Land Development Code states that a legal non-conforming use cannot expand unless the expansion is in conformance with all applicable Codes. Because commercial activities are not allowed in the RS-18b single-family zoning district, this expansion is in violation of the Land Development Code, Article 6 (District Regulations) Section 605 (RS018b Single-Family Residential District) and Article 12 (Nonconforming Situations) Section 1204 (Non-Conforming Uses). While the RS-18b zoning district does have provisions for home occupation uses as set forth in Article 9 (Development Standards) Section 915 (Home Occupation Uses) of the Land Development Code, as we explained to you on September 23, 2014, your current use of these properties is not in conformance with and far exceeds these regulations.

On a related note, Section 5.05.020 requires that all businesses must be in compliance with any and all regulations specified in the Sedona City Code, Sedona Land Development Code, and Arizona Revised Statutes. Compliance includes but is not limited to compliance with any and all zoning ordinances and specified building uses. Per Section 5.05.040(A) of the Sedona City Code, a business license may be suspended, revoked or deemed invalid if it is determined that a business owner has violated or is not in compliance with either the City Code, Land Development Code or the Arizona Revised statutes, or that the business is delinquent in paying taxes or fees to the City. Because you are not currently in compliance with this section due at least in part to the below-referenced violations of the Sedona Land Development Code, your business license is subject to revocation and your right to continue to do business within the City can be lost if you do not come into complete compliance.

VIOLATIONS:

- Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses). Son Silver West Gallery Inc.'s unauthorized expansion onto neighboring single-family properties (61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179) is in violation of the Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses) – expansion of a non-conforming use.
- Sedona Land Development Code, Article 6 (District Regulations). The use of neighboring single-family properties (61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179) is a violation of Sedona Land Development Code, Article 6 (District Regulations) where the single-family zoning designation (RS-18b) does not allow for commercial uses, except as provided in the Home Occupation ordinance. The current use of these properties is not in conformance with the home occupation provisions.
- Title 5 (Business Licenses). You are in violation of Sedona City Code, Title 5, (Business Licenses and Regulations) by virtue of the fact that you are not complying with any and all regulations set forth in the Sedona City Code, Sedona Land Development Code and the Arizona Revised Statutes. Because of this fact, your business license may be suspended, revoked or deemed invalid.

CORRECTIVE ACTION NECESSARY:

Immediately cease all commercial activities at 61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179. If you wish to use these properties in the future for commercial purposes, please schedule a meeting with Community Development staff to discuss your options. You do have the option to file for a major amendment to the Sedona Community Plan and a rezoning of the single-family residential properties to general commercial. In accordance with Arizona State Law, major amendments to the Community Plan are considered once per year and our next application submittal is tentatively scheduled for April 2015. The Planning and Zoning Commission and City Council would consider the



City of Sedona Community Development Department

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major amendment application in the summer and fall of 2015. Your zone change application could also be filed at the same time as the major amendment. Additionally, Staff can also discuss with you the Community Focus Areas specific planning process as outlined in the new Sedona Community Plan as another option for your consideration.

PENALTIES:

Failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audree Juhlin, Director

Community Development Department

cc: Nick Gioello, Development Services Manager
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Sedona Police Chief
Mike Goimarac, Sedona City Attorney
Tim Ernster, Sedona City Manager

6. Land Development Code references

Land Development Code References

Article 2 (Definitions)

“Nonconforming situation” means a condition that occurs when, on the effective date of adoption of this Code or a previous ordinance or on the effective date of an ordinance text amendment or rezoning, an existing lot, structure, building, sign, development or use of an existing lot or structure does not conform to 1 or more of the regulations currently applicable to the district in which the lot, structure, building, sign, development or use is located.

“Nonconforming use” means a use or activity which was lawful prior to the adoption, revision, or amendment of this Code and Zoning Map or previously applicable zoning ordinances and maps, but which is unlawful by the use regulations currently applicable to the district in which the use or activity is located.

Outdoor Lighting. This definition includes the following terms and definitions:

- A. **“Class 1 lighting”** means all outdoor lighting used for, but not limited to, outdoor sales or eating areas, assembly or repair areas, advertising and other signs, recreational facilities and other similar applications where color rendition is important to preserve the effectiveness of the activity.
- B. **“Class 2 lighting”** means all outdoor lighting used for, but not limited to, illumination for walkways, roadways, equipment yards, parking lots and outdoor security where general illumination for safety or security of the grounds is the primary concern.
- C. **“Class 3 lighting”** means any outdoor lighting used for decorative effects including, but not limited to, architectural illumination, flag and monument lighting, and illumination of trees, bushes, and the like.
- D. **“Direct illumination”** means illumination resulting from light emitted directly from a lamp, luminary, or reflector and is not light diffused through translucent signs or reflected from other surfaces such as the ground or building faces.
- E. **“Display lot or area”** means outdoor areas where active nighttime sales activity occurs and where accurate color perception of merchandise by customers is required. To qualify as a display lot, 1 of the following specific uses must occur: automobile sales, boat sales, tractor sales, building supply sales, gardening or nursery sales, and assembly lots. Uses not on this list may be approved as display lot uses by the Director.

- F. **“Foot-candle”** means 1 lumen per square foot. Unit of illuminance. It is the luminous flux per unit area in the Imperial system. One foot-candle equals approximately 0.1 (0.093) lux.
- G. **“Fully shielded light fixture”** means a light fixture that is shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted (see Figure 2.9).



Figure 2.9 Example of Fully Shielded Light Fixture (Shoe Box)

- H. **“Glare”** means the sensation produced by a bright source within the visual field that is sufficiently brighter than the level to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility; blinding light. The magnitude of glare depends on such factors as the size, position, brightness of the source, and on the brightness level to which the eyes are adapted.
- I. **“Installed”** means a light fixture attached or fixed in place, whether or not connected to a power source, of any outdoor light fixture.
- J. **“Light pollution”** means any adverse effect of manmade light.
- K. **“Light trespass”** means light spill falling over property lines that illuminates adjacent grounds or buildings in an objectionable manner.
- L. **“Lumen”** means a unit used to measure the actual amount of visible light which is produced by a lamp as specified by the manufacturer.
- M. **“Luminary”** means the complete lighting assembly, less the support assembly.
- N. **“Motion sensing security lighting”** means any fixture designed, and properly adjusted, to illuminate an area around a residence or other building by means of switching on a lamp when motion is detected inside the area or perimeter, and switching the lamp off when the detected motion ceases.
- O. **“Multi-class lighting”** means any outdoor lighting used for more than 1 purpose, such as security and decoration, such that its use falls under the definition of 2 or more classes as defined for Class 1, 2 and 3 lighting.

- P. **“Net acreage”** means the remaining ground area of a parcel after deleting all portions for proposed and existing public rights-of-way and undeveloped area.
- Q. **“Outdoor light fixture”** means an outdoor illuminating device, outdoor lighting or reflective surface, lamp or similar device, permanently installed or portable, used for illumination, decoration, or advertisement. Such devices shall include, but are not limited to, lights used for:
1. Buildings and structures;
 2. Recreational areas;
 3. Parking lot lighting;
 4. Landscape lighting;
 5. Architectural lighting;
 6. Signs (advertising or other);
 7. Street lighting;
 8. Product display area lighting;
 9. Building overhangs and open canopies;
 10. Security lighting.
- R. **“Outdoor recreation facility”** means an area designed for active recreation, whether publicly or privately owned, including, but not limited to, parks, baseball diamonds, soccer and football fields, golf courses, tennis courts, and swimming pools.
- S. **“Partially shielded light fixture”** means a fixture shielded in such a manner that no more than 10% of the light emitted directly from the lamp or indirectly from the fixture is projected at an angle above the horizontal, as determined by photometric test or certified by the manufacturer. Luminaries mounted under canopies or other structures such that the surrounding structure effectively shields the light in the same manner are also considered partially shielded for the purposes of this Code.
- T. **“Security lighting”** means lighting designed to illuminate a property or grounds for the purpose of visual security. This includes fully shielded lighting designed.
- U. **“Unshielded fixture”** means any fixture that allows light to be emitted above the horizontal directly from the lamp or indirectly from the fixture or a reflector.

- V. **“Watt”** means the unit used to measure the electrical power consumption (not the light output) of a lamp.

Article 6 (District Regulations)

605 RS-18b Single-Family Residential District.

605.01 Purpose. This district is intended to promote and preserve low density single-family residential development. The principal land use is single-family dwellings and incidental or accessory uses.

605.02 Use Regulations. Buildings, structures or premises shall be used and buildings and structures shall be erected, altered or enlarged only for the uses listed below. All other uses not specifically listed or determined to be similar to those described below shall be prohibited and unlawful.

A. Permitted Uses and Structures.

1. Accessory dwelling unit subject to the conditions as set forth in SLDC 918, Accessory dwelling units (ADU).
2. Accessory uses and structures located on the same lot as the principal uses and structures and including the following:
 - a. Swimming pools in other than the front yard;
 - b. The noncommercial keeping of household pets;
 - c. Fences and freestanding walls;
 - d. Quarters attached to the dwelling for servants and/or nonpaying guests excluding quarters with separate facilities for preparation of food;
 - e. Columbariums in association with an established religious institution, church or place of worship, as determined by the Director.
3. Detached guest house subject to the following conditions:
 - a. Guest house shall be architecturally treated in the same or compatible manner as the single-family dwelling. Mobile and manufactured homes, travel trailers and recreational vehicles shall not be used as guest houses;

- b. Guest houses shall contain no kitchen facilities and shall be connected to the same utility services as the single-family dwelling;
 - c. Guest houses shall not be rented or used for purposes of supplemental income or used as a separate dwelling unit;
 - d. Detached guest houses must observe the same setbacks or yards required for the single-family dwelling;
 - e. A guest house may be converted to an accessory dwelling unit (ADU); provided, that it meets all ADU requirements as set forth in SLDC 918, Accessory dwelling units (ADU).
- 4. Home occupation uses subject to the requirements set forth in SLDC 915.
 - 5. Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit. A permit must be obtained prior to occupancy of the temporary housing.
 - 6. Public utility installations not exceeding 650 square feet but not including public utility offices, water tanks, or repair or storage facilities.
 - 7. One single-family dwelling or factory-built house, not including a mobile or manufactured home. Rentals of single-family dwellings for periods of less than 30 consecutive days are prohibited.

B. Uses Subject to Conditional Use Permit.

- 1. Accessory uses and structures located on the same site as a conditional use, including recreation facilities accessory to religious or educational institutions.
- 2. Day care and nursery schools.
- 3. Educational institutions, including charter schools and private schools, provided they offer a curriculum of general instruction similar to public schools subject to the requirements as set forth in SLDC 914
- 4. Model homes.
- 5. Parks and recreational facilities
- 6. Public utility and public service substations, water tanks, pumping plants and similar installations 650 square feet or greater, but not including public utility offices or repair or storage facilities.

7. Religious institutions, columbariums, churches and places of worship, in permanent buildings.
8. Subdivision sales offices in permanent structures.

Article 9 (Development Standards)

902.03 Outside Storage

- A. In all residential districts, a maximum area of 200 square feet may be used on any 1 lot or parcel for the outdoor storage of any used or secondhand materials, including, but not limited to, lumber, auto parts, household appliances, pipe, drums, machinery or furniture. Such outdoor storage shall be screened by a wall, fence, landscaping, structure, or other suitable screening from adjacent properties and streets, and shall be located only in rear or interior side yards.
- B. All boats, trailers, motor homes, travel trailers, recreational vehicles and buses shall be kept in reasonable repair and operable and neatly arranged in a parked condition, located in the rear or interior side yard and shall be screened from adjacent properties and streets by a wall, fence, gate, landscaping or other suitable screening. Operable motor vehicles may be parked on the driveway or access way to the garage or carport.
- C. No travel trailers, motor homes or recreational vehicles on residentially zoned parcels or lots shall be used or made suitable for use or occupancy.
- D. No mobile home shall be placed or kept on a lot without a current valid building permit and without erection of permanent foundations and hook-ups to facilities, permanent piers, blocks or foundations.
- E. The outside storage of objects and materials shall be permitted as an accessory use in C-1, C-2 and C-3 Districts, providing that such storage is totally screened from the view of any contiguous property, right-of-way or easement by means of a masonry wall, solid wood fence or other suitable screening and/or landscaping, unless otherwise provided for in Article 6 SLDC. Outside storage as an accessory use shall not include the display of merchandise for sale, except as provided in Article 6 SLDC. Vending machines permanently installed against but outside a structure shall not be considered an outside display, provided the number of such machines is approved by the Director.
- F. The outside placement of metal storage containers shall be limited to C-1, C-2, C-3 and RS-70 zones. No storage unit shall exceed the individual dimensions of 20 feet in length by 8 feet wide by 10 feet in height (20 feet by 8 feet by 10 feet).

907.02 Screening of Uses.

- A. Where a multiple-family dwelling or structure, including incidental or required accessory uses and parking areas, abut property in a single-family district, a masonry wall, solid wood fence or other suitable screening and/or screen landscaping 6 feet in height shall be established and maintained between these uses and the single-family district, as determined by the Director.
- B. Where public or semi-public uses and/or associated parking are established, a masonry wall, solid wood fence or other suitable screening and/or screen landscaping 6 feet in height shall be erected and maintained between these uses and residential uses on adjacent properties, as determined by the Director.
- C. Where a commercial or office use or parking area abuts property in any residential district, a masonry wall, solid wood fence or other suitable screening and/or landscaping 6 feet in height shall be erected and maintained between these uses and the residential district.

907.03 Additional Requirements.

- A. Subject to the approval of the Director, newspaper racks shall be permanently installed against a building or structure and cannot obstruct sidewalks or walkways. All other vending machines shall be installed against or inside a building or structure so as not to be visible from adjacent properties.
- B. All uses in commercial districts shall be conducted within a completely enclosed building unless otherwise permitted by this Code. Outside display and/or sales of merchandise are prohibited unless permitted in accordance with the provisions of Article 6 SLDC.

911.05 Outdoor Lighting Standards.

- A. Low Pressure Sodium Lighting. Due to their high energy efficiency, long life and spectral characteristics, low pressure sodium (LPS) lamps are the preferred illumination source throughout the city. Their use is to be encouraged, when not required, for outdoor illumination whenever its use would not be detrimental to the use of the property. Ten percent white light added to LPS light permits nearly normal color perception.
 - 1. Class 1 Lighting. Low pressure sodium (LPS) lamps are not required. Businesses who chose to use LPS as their primary lamps are eligible to apply for an additional 10% increase in the lumens per acre allowed for their site.
 - 2. Class 2 Lighting. Low pressure sodium (LPS) lamps are required. Up to 10% of the total lumens per acre allowed may be white light.

- B. Light Trespass Standard. All light fixtures, including security lighting, shall be aimed and shielded so that the direct illumination shall be confined to the property boundaries of the source. Particular care is to be taken to assure that the direct illumination does not fall onto or across any public or private street or road. Motion sensing light fixtures shall be fully shielded and properly adjusted, according to the manufacturer's instructions, to turn off when detected motion ceases.
- C. Lamp and Shielding. All light fixtures are required to be fully shielded and shall be installed in such a manner that the shielding complies with the definition of fully shielded light fixtures for all uses, including single-family and multifamily residential uses, except as provided below.
1. All lamp types above 2,000 lumens shall be fully shielded.
 2. Partially shielded light fixtures may be permitted subject to the approval of the Director. Partially shielded light fixtures are limited to a maximum of 5,500 lumens per net acre and shall not exceed 2,000 per lamp (see subsection 911.05(D) of this section).
- D. Total Outdoor Light Output Standards – Nonresidential and Multifamily Uses.
1. Total outdoor light output shall not exceed 100,000 lumens per net acre for all development except single-family residential uses. This cap is not intended to be achieved in all cases or as a design goal. Instead, design goals should be the lowest levels of lumens necessary to meet the lighting requirements of the site. Partially shielded light fixtures are limited to a maximum of 5,500 lumens per net acre and are counted towards the 100,000 lumens per net acre cap.
 2. Seasonal decorations, permitted between Thanksgiving and January 15, are not counted toward these limits. Lighting used for external illumination of signs is counted.
- E. Total Outdoor Light Output Standards – Single-Family Residential Uses.
1. Outdoor lighting for single-family residential uses is not subject to a lumens per net acre cap.
 2. Outdoor lighting for single-family residential uses is subject to the lamp fixture and shielding requirements.
- F. Parking Lot Standards. Parking lots shall be considered Class 2 lighting. Parking lot lighting poles shall be sized in such a manner that the top of any luminary does not exceed 12 feet above adjacent grade.
- G. Lighting Time Limitations.

1. Class 1 lighting, including but not limited to sales, service, commercial, assembly, repair, maintenance, and industrial areas, may only continue in operation until 11:00 p.m. or for as long as the area is in active use but once off remain off during nonbusiness hours.
 2. Class 2 lighting shall have no time restrictions except as specified by any conditions of approval. Uses that do not require all-night illumination are encouraged to turn off their outdoor lighting during night hours whenever possible.
 3. Class 3 lighting, except for flagpole lighting, must be extinguished after 11:00 p.m. or when the business closes, whichever is later, except that low-wattage holiday decorations may remain on all night from Thanksgiving to January 15.
 4. Multi-class lighting, except for security lighting, must conform to the time limitations of the strictest class.
- H. Multi-Class Lighting Standard. Multi-class lighting must conform to the shielding and timing restrictions, if any, that apply to the most restrictive included class.
- I. Class 3 Lighting Standards.
1. All Class 3 lighting must be selected, designed, installed, and aimed so that there is a minimum amount of spill beyond the area intended to be lighted.
 2. Permanent exposed string lighting is not permitted.
 3. All Class 3 lighting must comply with the light trespass standards as described in subsection 911.05(B) of this section.
 4. All Class 3 lighting shall comply with the lamp and shielding standards as described in subsection 911.05(C) of this section.
 5.
 - a. Subject to the approval of the Director, uplighting or ground-mounted lighting may be allowed to accent unique features of a building and/or surrounding landscaping (such as outstanding architectural features, specimen trees with dense year-round foliage or large native shrub masses). Uplighting or ground-mounted lighting shall be designed and installed in such a manner as to minimize glare with special consideration in areas where there is vehicle and pedestrian traffic.
 - b. All lighting which is directed upwards shall be placed in such a manner that the angle of the lamp shall not be greater than 45 degrees measured from a horizontal plane to a line projected through the center of the lamp, and fixtures shall be fully shielded to contain and direct the light onto the feature to be lighted.
- J. Signs. See Article 11 SLDC, Sign Regulations.

- K. Mercury vapor light bulbs and fixtures in use for outdoor lighting on the effective date of the ordinance codified in this Code shall not be used after July 1, 2006.
- L. Searchlights, floodlights, laser source lights, strobe or flashing lights, illusion lights or any similar high intensity light shall not be permitted except in emergencies by police and fire personnel at their direction. Spot lights are permitted and must be directed downward 45 degrees from any neighboring property.

Article 12 (Nonconforming Situations)

1200 Purpose.

A nonconforming situation is a condition that occurs when, on the effective date of adoption of this Code or a previous ordinance or on the effective date of an ordinance text amendment or rezoning, an existing lot, structure, building, sign, development, or use of an existing lot or structure does not conform to 1 or more of the regulations currently applicable to the district in which the lot, structure, building, sign, development, or use is located.

- A. Any nonconforming situation which lawfully existed as of the effective date of the ordinance codified in this Code and which remains nonconforming, and any nonconforming situation which has become nonconforming as a result of the adoption of this Code, or any subsequent amendment to this Code, may be continued or maintained only in accordance with the terms of this article.
- B. This article provides for the regulation of nonconforming lots, structures, buildings, signs, development, and uses. These regulations are designed to protect the rights of legally existing nonconforming lots, structures, buildings, signs, development, and uses, but not promote expansion or enlargement. The lot, structure, building, sign, development, or use will be encouraged to convert to a conforming use in the future in order to preserve the integrity of this Code and the character of the city.
- C. The City Council, by resolution, may authorize the acquisition of private property by purchase or condemnation for removal of nonconforming uses and structures.

1201 Nonconforming lots.

A nonconforming lot is a lot or parcel, the area or dimensions of which was lawful prior to the adoption, revision or amendment of this Code or Zoning Map or previously applicable zoning ordinances and maps, but which fails, by reason of such adoption or amendment, to conform to the present requirements of the zoning district.

- A. Lots that were legally established and in conformance with the applicable zoning ordinance when created shall be eligible for construction and use in accordance with current standards, subject to the following. In any district where single-family dwellings are permitted, the yard requirements (setbacks) applicable in the zoning district shall apply, with the following exception: on substandard width lots, an interior side yard may be reduced by half the lot width shortage provided such reduction does not exceed 25% of the required yard width.
- B. If applicable yard requirements (setbacks) cannot reasonably be complied with in accordance with subsection (A) of this section, an administrative waiver or variance, whichever applies, from the applicable setback requirements may be granted based upon the findings of SLDC 405.04 (administrative waiver) or 404.06 (variances).
- C. This section only applies to undeveloped, nonconforming lots or to lots for which new construction is proposed.

1202 Nonconforming developments.

Nonconforming developments include buildings, structures, parking, landscaping and other property improvements that were lawfully existing prior to the adoption, revision, or amendment of this Code, or previous ordinance, in which the uses are otherwise in conformance with the district in which they are located, but which fail, by reason of such adoption, revision or amendment, to conform to the development standards applicable to the district. This Code is not intended to and shall not affect the right of nonconforming developments to be used in accordance with the uses permitted in the zoning district in which they are located.

All expansions, modifications, alterations or repairs of existing nonconforming buildings and structures for which the use is otherwise in conformance with the district in which it is located are subject to the following:

- A. Any expanded portion of a building or structure shall be in full conformance with the development standards of this Code, except where such conformance is not practical without the entire building or structure fully conforming (such as repainting an entire building to conform to color and light reflectance value requirements) where the provisions of subsection (C) of this section apply.
- B. In no case shall any modification, alteration or repair result in an increase in nonconformity with current development standards.
- C. If the total, cumulative increase in the floor area is 50% or less for single-family residential or 25% or less for all other uses, or if the total cumulative cost of any exterior modification, alteration or repair is 25% or less of the valuation of the building as determined by the

Director in accordance with the International Building Code, then full conformance of the existing portion of the building or structure is not required, except that:

1. Closer conformance to 1 or more of the following development standards is required:
 - a. Parking;
 - b. Landscaping;
 - c. Color/light reflectance value;
 - d. Height and massing;
 - e. Screening requirements;
 - f. Lighting;
 - g. Signs;
 2. If additional parking is required, per SLDC 912, due to a change of use or expansion, such additional parking must be provided.
- D. If the total, cumulative increase in the floor area is greater than 50% for single-family residential or greater than 25% for all other uses, or if the total cumulative cost of any exterior modification, alteration or repair is greater than 25% of the valuation of the building as determined by the Director in accordance with the International Building Code, then the entire building or structure and associated parking shall be in full conformance with the development standards of this Code (such as lighting, signage, landscaping, color and the like).

1203 Nonconforming signs.

- A. Continuance. A nonconforming sign lawfully existing at the time of adoption or subsequent amendment of this article may continue, although such sign does not conform to the provisions of this article.
- B. Maintenance. Any lawfully existing sign cannot be enlarged, reworded (other than in the case of cinema or theater signs), redesigned or altered in any way, including repainting in a different color, except to conform to the requirements of this article; and provided further, that any such sign which has deteriorated or is damaged or destroyed to such an extent that the cost of restoration would exceed 25% of the replacement cost can only be repaired or rebuilt or altered to conform.

- C. Replacement. Any sign replacing a nonconforming sign shall conform with the provisions of this article, and the nonconforming sign shall no longer be displayed. However, any nonconforming sign lawfully existing at the time of adoption or subsequent amendments to this article, advertising multiple businesses, may continue to exist as long as the sign structure itself is not redesigned, enlarged or altered, although the copy text for an individual business on a multiple tenant sign may periodically change.

1204 Nonconforming uses.

A nonconforming use is a use or activity which was lawful prior to the adoption, revision, or amendment of this Code and Zoning Map, or previously applicable zoning ordinances and maps, but which is unlawful by the use regulations currently applicable to the zoning district in which the use or activity is located. A nonconforming use may include physical improvements such as buildings, structures, parking, signs or other development. A legal nonconforming use may continue only in the manner and to the extent that it existed at the time of such enactment, amendment, or annexation, subject to the following provisions:

1204.01 Expansion of Nonconforming Uses. No expansion shall be made of any nonconforming use unless such expansion conforms to the regulations specified for the district in which it is located. In cases where the nonconforming use occupies a building, structure, or any portion of a site, expanding the use into an additional building or land area is prohibited.

1204.02 Abandonment, Discontinuance, Damage, Destruction and Reconstruction of Nonconforming Uses.

- A. No nonconforming building, structure or use which ceases to be used for a period exceeding 6 months or is superseded by a conforming use shall again be devoted to the nonconforming use except as otherwise provided in subsection 1204.02(B) of this section.
- B. Any building or structure or 1 or more of a group of buildings or structures related to 1 nonconforming use, and under 1 ownership, which has been damaged by fire, flood, explosion, earthquake, war, riot, or act of God, may be reconstructed pursuant to SLDC 1202 and used as before, if done within 12 months of such calamity. Where provisions of this article are in conflict with county flood control requirements, the more restrictive provisions shall apply.
- C. Within nonconforming mobile home parks, mobile and manufactured homes may be replaced subject to the following:
1. Replacement of damaged or destroyed mobile homes shall be subject to the provisions of subsection 1204.02(B) of this section;

2. The total number of spaces in the mobile home park shall not be increased over the number existing at the time the park became nonconforming;
 3. Mobile and manufactured homes shall maintain a minimum 10-foot setback from the perimeter of the park;
 4. There shall be a minimum 10-foot spacing between each mobile and manufactured home;
 5. Mobile and manufactured homes shall not be replaced with recreational vehicles;
 6. Within mobile home parks, existing recreational vehicles used for residential purposes may be replaced only with manufactured or mobile homes and shall not be replaced with recreational vehicles.
- D. The Planning and Zoning Commission may grant a reasonable extension of time for reconstruction if it is determined that a delay in reconstruction was caused by unforeseen circumstances beyond the control of the owner of the premises.

1204.03 Repair, Maintenance and Remodeling of Nonconforming Uses. Minor repairs and routine maintenance of property where nonconforming uses exist are permitted and encouraged; provided, that no structural alterations are made to buildings and structures unless required by ordinance or law, or permitted under the other provisions of this Code. Exterior remodeling of buildings and structures is also encouraged if the remodeling brings the building or structure into closer compliance with current development standards.

1204.04 Change in Use of Property Where a Nonconforming Use Exists.

- A. A nonconforming use shall not be changed to a different nonconforming use. This shall not prevent a name change or change in ownership of the same nonconforming use.
- B. If a change in use is from an impermissible to a permissible use, but full conformance with current standards cannot be achieved, then the change may be allowed subject to the Board of Adjustment or Director granting a variance or administrative waiver, as applicable. In addition to other findings required for a variance or administrative waiver, as applicable, the Board or Director must find that: compliance is not reasonably possible if compliance cannot be achieved without the addition of land or without moving a substantial structure that is on a permanent foundation. Financial hardship related to such requirements as paving a parking lot may not constitute grounds for granting a variance/waiver.

7. Public Comments

RECEIVED

MAY 11 2016

CITY OF SEDONA
COMMUNITY DEVELOPMENT

5/7/2016

Audree Juhlin, Director

Community Development Department

102 Roadrunner Rd, Sedona, AZ 86336

Dear Ms Juhlin,

I am writing in reference to the upcoming Board of Adjustment hearing on May 12, 2016, regarding the violation appeals of Son Silver West.

I am a homeowner who lives above the SSW business located on Highway 179. My wife and I are both newly arrived residents and are completing our house on property we purchased four years ago. I make reference to this because we (our builder) has had to comply with all of the city codes mandated for new construction including some very costly ones. While we have no personal animosity toward the SSW owners (and understand they have been here for decades), we do expect the city to mandate code enforcement on them with the same vigor as it has on our project.

I understand that there are numerous code violations cited against SSW and the business is disputing these which is their right, however, I urge the city to mandate enforcement of violations as soon as possible. It is clear that this commercial entity continues to expand despite existing in a Residential zone. The escalating damage from traffic, noise, and lighting must be stopped.

Please enforce the existing codes and mandate SSW comply with them immediately.

Sincerely,



Scott and Sharolyn Schroeder

121 Arrow Drive, Sedona

May 7, 2016

Audree Juhlin, Director

Community Development Department

102 Roadrunner Rd.

Sedona, AZ 86335

Dear Ms. Juhlin,

We are writing in reference to the upcoming Board of Adjustment hearing on May 12, 2016 regarding the violation appeals of Son Silver West.

We are a homeowner in the Broken Arrow subdivision. We are newly arrived residents who recently moved into our home which we purchased in 2009, after extensive remodel. To enable this remodel, we complied with all permits and city codes mandated for renovation. One of the reasons we chose to move and retire in Sedona was the strict zoning and city codes in effect. We are surprised that Son Silver West has been allowed to violate zoning and city codes to date.

While we have no personal animosity toward the Son Silver West owners, we do expect the City of Sedona to mandate code enforcement on them with the same vigor they apply to everyone else and which we have experienced.

I understand that there are numerous code and zoning violations cited against Son Silver West and the business is disputing these which is their right, however, I urge the City of Sedona to mandate enforcement of violations as soon as possible. The decision related to this case is precedent setting and could open the City to other violations if this is not addressed.

As a resident, it is clear the Son Silver West commercial entity is continuing to expand and has just recently connected their residence on Arrow Drive with their commercial store, manufacturing, and administrative office locations and operations. It appears Son Silver West may have a "special" relationship with the City of Sedona allowed by no one else. If this is the case, the City opens itself to lawsuit as others realize they are not treated in the same fashion as Son Silver West.

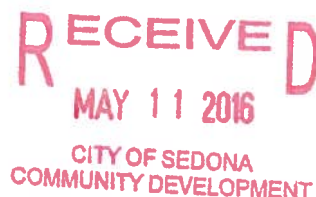
Please enforce the existing codes and mandate Son Silver West comply with them immediately.

Sincerely,



Anne and Tony Khoury

155 Arrow Drive



Audree Juhlin - Re: What is the time scheduled for the Son Silver West Hearing on5/12?

From: Stephen Schwartz <stephenschwartz@earthlink.net>
To: Audree Juhlin <AJuhlin@sedonaaz.gov>
Date: 5/6/2016 10:36 AM
Subject: Re: What is the time scheduled for the Son Silver West Hearing on5/12?
Attachments: supplemental Restrictions Tracks 38 - 61 Broken Arrow Subdivision..pdf

Thanks Audree,

Attached please find recorded Supplemental CC& R Restrictions limiting the uses to which Tracts 38-61 can be placed according to the declarant.

Kindly place this exhibit in the file as an exhibit.

Thank you,
Steve

Stephen H Schwartz, Esq., P.A.
Post Office Box 1524
Sedona, Az. 86339-1524
via e-mail: stephenschwartz@earthlink.net
[\(928\) 282-5700](tel:(928)282-5700)
fax [\(928\) 204-1581](tel:(928)204-1581)

Stephen H Schwartz, Esq., P.A.
Post Office Box 446
Hatch, Utah 84735-0446
[\(435\) 682-2845](tel:(435)682-2845)
fax [\(435\) 682-2844](tel:(435)682-2844)

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On Fri, May 6, 2016 at 11:20 AM, Audree Juhlin <AJuhlin@sedonaaz.gov> wrote:
Hi Stephen, you can submit comments to me right up to the hearing time. Audree

Sent from my iPad

SUPPLEMENTAL RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS: That NORTHERN ARIZONA LUMBER CO., an Arizona corporation, TRUSTEE, being owner of the legal title to:

TRACTS 38, 39, 40, 41, 42, 43 and 44, of BROKEN ARROW SUBDIVISION, Tracts 38 to 61 inclusive, a subdivision located in and being a part of the SE 1/4, SW 1/4 of Section 18 and NE 1/4, NE 1/4, of Section 19, Township 17 North, Range 6 East, GOSPER, Coconino County, Arizona, according to the plat of record in the office of the County Recorder of Coconino County, Arizona, in Book 2 of Maps, page 71, Official Records of said County and State

hereby amend and supplement, as to said Tracts 38, 39, 40, 41, 42, 43 and 44 only, the restrictions placed on all of said subdivision by instrument dated July 6, 1955 and recorded July 21, 1955, in Book 79 of Official Records, page 509, records of Coconino County, Arizona, as follows:

1. Said Tracts 38, 39, 40, 41, 42, 43 and 44 shall be used for single family dwelling home purposes only, except that professional offices for surgeons, physicians, osteopaths, chiropractors, dentists, attorneys, architects, realtors or engineers may be maintained thereon in conjunction with the use of the premises by any such professional persons for their own residential purposes as single family dwellings.

2. Except as above set forth, each and all of said Tracts 38, 39, 40, 41, 42, 43 and 44 shall be considered residential Tracts and as such shall be, and are hereby declared, subject to all of the covenants, conditions and restrictions as set forth in the instrument above referred to as recorded in Book 79 of Official Records, page 509, records of Coconino County, Arizona, and to all of the terms thereof.

IN WITNESS WHEREOF, the said Northern Arizona Title Co., as
Trustee has executed this instrument by its duly authorized officers
this 13th day of June, 1956.

NORTHERN ARIZONA TITLE CO., Trustee,

By Chas. B. Wilson, Jr.
President

ATTEST: A. H. Cameron
Secretary

APPROVED:

Frank E. Bracey
Frank E. Bracey

STATE OF ARIZONA)
County of Coconino } ss.

On this, the 13th day of June, 1956, before me, the
undersigned officer, personally appeared Chas. B. Wilson, Jr. and
A. H. Cameron, who acknowledged themselves to be the President and
Secretary, respectively, of the Northern Arizona Title Co., a
corporation, and that they, as such President and Secretary, res-
pectively, being authorized so to do, executed the foregoing in-
strument for the purposes therein contained, by signing the name
of the corporation, by themselves as President and Secretary,
respectively.

IN WITNESS WHEREOF, I have hereunto set my hand and official
seal.

My commission expires:

November 5, 1958.

W. H. C. C. C.
County Public

No. 2923

RECORDED AT REQUEST OF NORTHERN ARIZONA TITLE CO.

June 13th 1956 3:00 PM

44-91 Official Recs. 44-15

Edna Mae Thornton

Edna Mae Thornton

By Edna M. Thornton

1956 JUN 15 45



SON SILVER WEST NEEDS YOUR SUPPORT!!

Son Silver West received a Notice of Violation from the new City of Sedona Director of Development which attempts to overturn a 2011 decision by the City's prior Director of Development.

We want to improve parking and traffic safety!!

This petition will EXPRESS Son Silver West Concerns about parking and "Dark Sky" compliance, also to SAVE Father Kino Chapel and for the city to accept it's prior 2011 decision. Son Silver West wishes to remain a Local Sedona Family Home Grown Business for 35 years and counting!!

Date 4/29/16 Name C. Mc Reynolds

Address 1926 E. Walnut St. Tempe, Az 85284

Phone # 480-775-0595

Signature C. Mc Reynolds

Thank you for supporting a family business!!

April 14, 2016

Mr. Justin Clifford
City Manager of Sedona
Sedona City Hall
106 Roadrunner Dr.
Sedona, AZ 86336

Dear Mr. Clifford:

It has come to my attention that Son Silver West Gallery, Inc. received a Notice of Violation from the new City of Sedona Director of Development, Audree Juhlin. This gallery and overall property is one of the most fantastic places in all of Sedona. For decades we have taken family and friends from as far away as Europe to Son Silver West, and it has been one of their favorite places.

A 2011 decision by the prior Director of Development is now being overturned by Ms. Juhlin. This is very concerning to me, and I am sorry to hear that this action is threatening this family-owned businesses. That's unconscionable. I sincerely hope that Sedona will retract the notice of violation and not rob visitors to Sedona of such a marvelous business. Please encourage a sincere reconsideration of this "violation" and leave Son Silver West exactly as it is.

Respectfully,

A handwritten signature in black ink, appearing to read 'Kar Preston', with a long horizontal flourish extending to the right.

Kar Preston

Flagstaff

Cc: Audree Juhlin

Cc: Son Silver West Gallery, Inc.

RECEIVED
FEB 17 2016

CITY OF SEDONA
COMMUNITY & ECONOMIC
DEVELOPMENT

Christina Hurst
805-814-4180

To Whom it May concern:

I am writing this letter in response to hearing that the city wants to close the little Father Kino chapel at San Silver west.

I am appalled and can't understand what possible harm this little spirit place could be causing. What, did some Atheist or other religion complain about it.

Please advise me of why the Sedona city members have a problem with this peaceful place, tucked in behind some outdoor statues.

Many times when I have not been able to get to church, I was able to walk up to the little chapel and feel better.

Please leave the Chapel alone!

Christina Hurst
% P.O. Box 982
Rimrock, AZ 86335

Dec. 28th, 2015
Jack & Charlene Erceg
75 Cypress Drive
Sedona, AZ 86336

City Manager & Director of Comm. Dev.
102 Roadrunner Drive
Sedona, AZ 86336

Gentlemen,

We have been residents in Sedona for the past 17+ years and for the entire time we have resided here we have seen “selective enforcement” as the rule instead of the exception. To say the very least, we are not pleased with the way local government goes about doing their business since it quite apparent that those of wealth, political standing or close relationship with governmental employees have the say in what happens here in Sedona.

The situation with Son Silver West is just another prime example as to how a company can get the City to close their eye to all the violations perpetrated by this establishment over the years whereas, a small local business known as the Chocolate Tree had to cease doing business due to City action involving a trivial matter. We have seen this occur time & time again and feel that Sedona officials seem to have it out for some while their friends & associates are allowed to get away with murder!

In the Letter to the Editor written by Walter Shrode and we quote: “Yet, Son Silver West Gallery Inc., located off Hwy 179, has thumbed its nose at the city’s notice of violations going back as far as 1989, according to city records. Though it too has been warned that its business license could be revoked and that the business could be fined up to \$2,500 per day, the fact is it has not become compliant but instead has added additional violations of city code over the years.” The City has condoned this behavior!

We, residents of Sedona are truly sick and tired of the way the City has performed their oversight over the years and now demand that you do what you are supposed to do and that’s enforce the codes uniformly and stop being selective in your judgment & enforcement.

To correct all the injustices created by City officials pertinent to the infractions and violations of Son Silver West, we are requesting comprehensive action that SSW cease & desist all commercial use of this property.

Let’s see if Sedona can right their wrongs and elect to do what is rightrunning this City with a dictatorial hand has got to cease!

Sincerely, Jack & Charlene Erceg

FACTS COMMON TO ALL CLAIMS

11. In 1981, Plaintiffs Bill and Rose Robson purchased an art gallery with outdoor retail display known as La Galleria located on Tract 42 of Broken Arrow subdivision lying west of State Route 179 and south of its intersection with Arrow Drive in the unincorporated area of Coconino County. This art gallery business had been continuously operating at this location since 1960.

Hi Audree

It is my belief that this statement is not true. La Galleria was operated within the home of Al and Ernestine Nestler (as required by the Deed Restrictions) and **did not** have outdoor selling space. It certainly did not have the 5,000 square feet of space that was the issue involved in the 1989 NOV or the additional selling space they now acknowledge they have built over the years.

Ernestine was a good personal friend of my Grandmother and I had the pleasure of getting to know her before she and Al opened La Galleria and to see her and her Gallery when I visited my Grandmother throughout the years, and after my Grandmother's death in 1974, when visiting my mother. I never remember any outdoor selling space until after the Robson's purchased the gallery in 1981 and then it started as an expansion inside the home and a small portion of the carport. The Gallery was approved as an Art Business within the home – not the outdoor "Little Tijuana" it has become. The Deed Restrictions are clear on what is allowed and what is not allowed on these tracts of land. I hope the Judge will take this information into consideration when deciding this special action. I know the City does not get involved in enforcing Deed Restrictions; however the Judge can and should.

Please pass this on to Mr. Pickles

Sincerely,

Eric Shrode
238 Paramount Dr.
Sedona, AZ 86336
(928) 963-0720

Audree Juhlin - RE: Rio

From: "Eddie Maddock" <eddies@npgcable.com>
To: <Rio@sonsilverwest.com>
Date: 12/23/2015 11:31 AM
Subject: RE: Rio
Bc: Audree Juhlin

Hi Rio:

The reason I've not responded to your request is because I don't believe I'm able to help you. As written in the e-mail to John Martinez, when I moved to Sedona in 1977 my dentist, Oliver Hundelt, together with the Ranger Station, occupied the building on the corner. The property purchased by your father was zoned for what was called a "cottage industry," owned by residents Al and Ernestine Nestler who operated an art gallery as part of their residential property, much like the one still existing in the Chapel Area. Commercial zoning didn't exist and when your father's business commenced to expand beyond the home and gallery, along with others I wondered why and how that was allowed.

The question that remains in my mind is why the city was so remiss in enforcing the zoning violations throughout the years under the supervision of former Community Development Director John O'Brien and possibly as far back as Tom Schafer.

Having experienced our own grievances with non-compliance to city codes due to improper fencing being approved on adjacent property to ours which resulted in flooding conditions to our property in 1998, the only way we could get it resolved was to offer the city of a Letter of Intent authored by Phoenix Attorney Cameron Artigue. As a result and at the cost of the city a complete engineering evaluation of the drainage occurred which appropriately addressed the problem and also at the expense to the city the entire channel was returned to it's original state.

Again in 2006 when I noticed another fence had been placed in the drainage channel, this time by a new owner of the property, when I contacted the city as in the past an attempt to correct the situation was initially addressed by city engineers that the fence was not a problem. And it was only when I offered my copy of the city authorized engineering report from Shephard-Wesnitzer that they paid attention and even asked "where did you get this?" (It was provided to me and my husband by former city engineer Carol Johnson and because the city wasn't even

able to locate a copy of it in their own records, I provided one for them, cranked out on my own home Xerox).

You may wonder what any of this has to do with your situation, and it all has to do with private property rights, zoning, and code enforcement, but mostly my own ongoing questions relating to the lax of certain past city employees to adequately and efficiently perform jobs in the manner they should have been. Had that been the case, our own property wouldn't have been flooded. Had it been the case with your father's usage of your property, it would never have been allowed to become what it is today and the legal action by disgruntled residents would not now be an issue.

As another example, it's very possible that in the not too distant future the matter of allowing short-term or vacation rentals will be coming before the Sedona City Council again. As in my own subdivision this has been an enforcement problem in the past, it seems quite apparent that residents will not take it lightly and without protesting, as rightfully they should since our present zoning is for Single Family Residential.

Because I was appalled that lobbyists for electing only those council candidates that would support funding the Chamber of Commerce for marketing Sedona decided to drag your property issue into the city council election battle, it resulted in the e-mail communication to John Martinez. You were a child when you lived on Morgan Road when your father breached the zoning use of his property and the city code enforcers allowed for that to occur.

Whatever the outcome here it most assuredly should not be targeted as the responsibility of the current Director of Community Development, Audree Juhlin, since she is simply in the position of having inherited a can of worms that should never have happened in the first place.

These are my thoughts and one day if you are in a situation of having your own personal residential property in jeopardy of intrusion, only then might you have some understanding of the other side of the coin.

It's all very unfortunate and had the rules not been broken and then subsequently ignored, none of this would be necessary.

Good luck on the outcome and I'm truly sorry about the entire fiasco.

Eddie



City of Sedona

102 Roadrunner Drive

Sedona, AZ 86336

December 23, 2015

To Justin Clifton and the Sedona Board of Adjustments:

Rio Robson reached out to us and asked that we confirm:

Son Silver West Galleries is a valued member of Sedona's business community and is in good standing as a member of the Sedona Chamber of Commerce. This business is a landmark welcoming visitors for many years entering Sedona on Highway 179 and contributes to the economic vitality of Sedona.

We hope for resolution from both parties.

Please feel free to contact us if you have any further questions. Thank you.

Sincerely,

Linda Goldenstein

Chairman, Sedona Chamber of Commerce Board of Directors

Dear Ms. Juhlin,

December 21, 2015

I received your letter of December 11th, regarding the case of Son Silver West Gallery. My wife and I have a home at 170 Bowstring drive, which as you noted is within 1000 feet of Son Silver.

You write that Son Silver was given a conditional permit to conduct their commercial enterprises at their current location. That was in 1992, and my understanding is that 1) the permit has long since expired, and 2) Son Silver has been conducting a type of business which violates not only that expired permit, but existing City of Sedona regs as well.

I should say that I have shopped at the Son Silver store. I have found the people there to be very friendly. The merchandise ranges from tacky souvenirs to high quality items and overall it's a great store. But my wife and I are very concerned that they wish to have all operations there grandfathered. And we are especially concerned about their intentions to expand their business on that site.

With regard to the first point of grandfathering their operations, this would create an exception in city rules. It would likely be used by other businesses as a precedent, to take advantage of the city and perhaps Broken Arrow neighborhood residents. There are minimal exceptions allowed in Broken Arrow for businesses within it. Businesses must not attract large numbers of customers. They must also be "in-home" businesses (able to operate out of a residence). Son Silver clearly does not, and cannot, comply with those exceptions.

Secondly, the business is already quite large. Some residents have complained of noise from the traffic there, as well as workshop noise. We do not experience the latter annoyance but I have no reason to doubt those residents. For this reason alone, expansion of their operations should absolutely be prohibited. There is no pressing need for more parking (I have always found parking there). Even if there were, more parking would create an additional eyesore and more traffic flow. This, in an area of profound natural beauty. Son Silver categorically does not need it and the neighborhood would suffer greatly as a consequence.

If for some reason the City determines that Son Silver can stay at their current location, they should be required to dramatically scale back their operations. They must not be allowed to manufacture any goods on site. They should also give up all plans to expand or to build any other commercially related structures or parking lots on their land. If they need more space they can buy or lease it at a new location. This would diversify their customer base and give them more opportunities to sell their items. As a businessman myself, I believe this would be a better strategy for expansion of their business.

Sincerely,
Ian Fowler
170 Bowstring Drive, Sedona



Audree Juhlin - ENSURE THAT SON SILVER WEST COMPLIES WITH OUR CITY REGULATIONS

From: Jerry Hartleben <jerrycamera@gmail.com>
To: <AJuhlin@sedonaaz.gov>
Date: 12/21/2015 11:05 AM
Subject: ENSURE THAT SON SILVER WEST COMPLIES WITH OUR CITY REGULATIONS

Dear Audree Juhlin,

As a residents and property owners in the Broken Arrow Subdivision in Sedona, we resent that Son Silver West Gallery continues to refuse to comply with City Codes and is requesting an unfair exemption.

Please do not let this appeal for an exemption succeed. Why do we have City Codes, if some businesses can unfairly petition for exemptions. This is unfair to the citizens of Sedona, and other businesses who follow the rules.

We support the City's action to require Son Silver West to comply with **ALL** of the conditions of the Use Permit. Please don't let them continue to violate the conditions of the Use Permit which they have been doing for the past 26 years.

Thank you,

Jerry Hartleben and Sheri Schlozman

jerrycamera@gmail.com

From: Ed Pittman <edpitt@suddenlink.net>
To: <Ajuhlin@sedonaaz.gov>
Date: 12/19/2015 12:26 PM
Subject: Hearing on Dec. 29th

Audree Juhlin
Community Development Director

Ms. Juhlin:

I will be out of town on December 29th and cannot attend the appeal hearing on Son Silver West. I wanted to pass along some of my observations as a resident in the area.

I drive past the house at 61 Arrow Dr. daily. This supposed residence has been used for storage for a long time. They have a tractor equipped to lift pallets. I see the tractor moving pallets from the garage. It sometimes moves onto Arrow Dr. halting traffic. The huge green Son Silver truck commonly parks on Arrow to unload goods. It takes up over half the street. Employees park on Arrow. Typically, a half dozen cars are present. Because of the drainage ditch they cannot get far off the pavement. This is a residential neighborhood, we do not need unnecessary congestion.

From the front, Son Silver is trashy looking. A screening fence would help that problem.

Son Silver has a track record of doing whatever they want. When caught, they apply for a permit and ask forgiveness. Please enforce the code fairly for all business. I saw in the newspaper where the city cracked down on the Chocoma Tree. Please do the same for Son Silver.

Thank you,

Edward Pittman
222 Bowstring Dr.

Name:	Jayna Gerber
E-Mail Address:	jwgerbs@gmail.com
Phone Number:	Information not Disclosed
Address:	Information not Disclosed
Message:	<p>Ms Mayor, City Council members and City Manager; I want you to know that I am concerned with the illegal activities going on at Son Silver West Gallery, Inc and the City's lack of enforcement action. They have been in violation of the Conditional Use Permit (CUP) granted by the City since 1989. Even though they were in violation of the 1989 CUP, they were granted a revised CUP in 1992 with conditions, which they have not abided by. They have been cited for violations of City codes as recently as Nov 10, 2015, which they have yet to comply with. You have taken action against Chocola Tree for far less violations. This uneven enforcement of City Code seems very unfair. It is time the City acknowledges their responsibility for the current state of affairs at Son Silver West and pulls their license until they get into compliance. Respectively, Signed Jayna Gerber</p>

Name:	Tom & June Trimble
E-Mail Address:	tritomua@gmail.com
Phone Number:	520-850-3636
Address:	2798 W. Appaloosa Road Tucson, AZ TUCSON, AZ 85742
Message:	<p>Gentlemen & Ladies; This correspondence is being sent in support of Son Silver West Gallery. We are not residents of Sedona, but are native Arizonans. Over the past 10 years we have had the opportunity to visit and shop many times at Son Silver West, in fact it is our favorite thing to do while in Sedona. It is our very strong belief that you the leaders of Sedona should be doing everything within you power to support Son Silver West, a locally owned business that contributes greatly not only to the tax base of the town but brings in visitors such as ourselves. We can not believe that the City of Sedona is attempting to make it very difficult, if not impossible for Son Silver West to continue in business by staff requiring Board of Adjustment Hearing and Variances for a LOCAL BUSINESS that has been in operation for many years. Please use your judgement to keep this gem in operation ion Sedona.</p> <p>Regards, Tom & June Trimble</p>

Audree Juhlin - Son Silver West

From: Judy Reddington <judy.reddington@gmail.com>
To: "JClifton@sedonaaz.gov" <JClifton@sedonaaz.gov>, Audree Juhlin <AJuhlin@...>
Date: 12/16/2015 6:27 PM
Subject: Son Silver West

To Whom It May Concern,

Please enforce the laws and ordinances relating to Son Silver West.

The business uses at Son Silver West are not suitable for a residential neighborhood. SSW squats on a scenic roadway and is inappropriate for Scenic 179 at the entry to our city. Whatever the intent was of a gallery at that location has gone far in a different direction with manufacture, storage and unbridled outdoor display.

I was a member of the Citizens Committee for the Community plan and we spent almost 3 years "visioning" a beautiful city that works. Other people have spent a great deal of time, before and after, to write and enforce the rules and regulations that help us all to be good neighbors and responsible citizens.

Son Silver West has demonstrated a complete disregard for our city's rules. Their pattern of violations is a real problem.

It's unfair on several levels but it's particularly unfair to the property owners who share their neighborhood and to businesses who follow the rules.

There are plenty of greedy people who would like to "trick around with zoning" and take advantage of Sedona. Where can the SSW pattern of non enforcement lead us?

Sincerely,

Judy Reddington
145 Paramount Drive
Sedona, AZ 86336

phone: 928 274 2666

Audree Juhlin - Son Silver West

From: Linda Johnson <johnsonlf55@gmail.com>
To: <AJuhlin@sedonaaz.gov>
Date: 12/16/2015 5:40 PM
Subject: Son Silver West

To Whom It May Concern:

I am writing this letter of support for Son Silver West in Sedona. I live in northern Wisconsin on the shores of Lake Superior. We are a small city of 25,000 residents. We support all of our small business' in Superior, WI. We understand the dedication, pride and energy it takes to run and to compete with big box stores. I am baffled as to why you are against the small business concept/stores.

I love Sedona, I speak of it often always including Son Silver West!!! It is simply an amazing place to shop. To make it so difficult for the owners to continue to operate in this beautiful city is shameful!!!!

Small business is a vital industry to ALL towns and cities in this nation.

Audree Juhlin - Son Silver West

From: Tara Palmer <lilredangel@msn.com>
To: "ajuhlin@sedonaaz.gov" <ajuhlin@sedonaaz.gov>
Date: 12/15/2015 11:14 AM
Subject: Son Silver West
Cc: "rio@sonsilverwest.com" <rio@sonsilverwest.com>

To whom it may concern;

I am not a resident of Sedona, AZ. However, I was a customer back in May of 2015. My mother and I flew in from Wisconsin for a weekend trip to Phoenix and decided to take the drive to Sedona. We stopped at a couple of places that we found on brochures but we didn't find anything authentic that grabbed our interest. Then we drove by Son Silver West. From the road, we decided it looked like an interesting place to stop. We were completely thrilled to find the great things we found. We probably spent 2 hours looking at all the great gifts and items they had. It was our number one stop of our entire weekend trip. We still talk about it to this day. The employees were beyond helpful as I had many questions about many items. We spent a large amount of money at this store and were glad to do it. The other shopping stores in Sedona seemed too touristy for us.

Just last week, I was thinking about this store and how much I loved it, that I literally ended up booking a trip to surprise my daughter and I to come out there again. This may sound silly but the Son Silver West store was going to be my special treat for her to see. The rest of Sedona can be seen on Google images, etc. But you can't feel the real southwest without browsing through this amazing store. Plus we are shopaholics so there is no feeling like getting the type of unique items that these guys offer.

The day after I booked our airfare, I see this news that the store is being threatened to be shut down. As a consumer to this amazing store, I'm heartbroken for them as a family but I'm angry that this possibly could take away the memory I based my future trip on to make with my daughter.

I can't speak on what supposed violations the city is trying to go after them for of course but I feel it's my right and my honor to do anything I can to help them save their business.

Thank you

Tara Palmer

Broken Arrow Coalition
238 Paramount Dr.
Sedona, AZ 86336

December 15, 2015

Sedona Board of Adjustment

RE: Appeal of Nov 10, 2015 NOV by Son Silver West Gallery, Inc.

As you consider the appeal request, I would like for you to keep the following history in mind.

History of Broken Arrow Subdivision and Son Silver West Gallery, Sedona AZ

Lots 1 - 37

- July 8, 1952 the original tract owners, Frank and Ann Bradley establish the Deed Restrictions for lots 1 through 37 which were duly registered with the County Recorder of Coconino County on July 8, 1952, Book 34, pages 258-261.
- July 19, 1952 Frank and Ann Bradley amended the restrictions for lots 1 through 37 which were duly registered with the County Recorder of Coconino County on July 21st, 1952 in book 34, pages 414-415.
- July 28, 1952 Frank and Ann Bradley consolidated the previous restrictions for lots 1-37 into one document which were duly registered with the County Recorder of Coconino County on July 28, 1952 in Book 34, pages 576-579

Lots 38 – 61

- July 8, 1952 Frank and Ann Bradley established Deed Restriction for lots 38 to 61 which were duly registered with the County Recorder of Coconino County on July 21, 1955 in Book 77, pages 509-512
- June 13, 1956 Frank E Bradley amended and supplemented the Deed Restriction for lots 38 to 61 specifically, as they pertained to lots 38, 39, 40, 41, 42, 43 and 44.

All of the above documents specify “that said Lots shall be used for single family dwelling house purposes only, excepting business Lots hereinafter specified.”

Business lots for Broken Arrow Estates (located on the East side of Sedona Rimrock Highway – (now ST Rte. 179) were designated as lots Numbered 1 to 7 inclusive.

Business lots for Broken Arrow West (located on the West side of Sedona Rimrock Highway – (now ST RT 179) were designated as lots Numbered 38 to 44 inclusive.

Both sets of “business lots” had specific restrictions regarding the type of businesses that are acceptable. Both stated that “said lots shall be considered residential tracts and as such shall be, and are hereby declared, subject to all of the covenants, conditions and restrictions as set for in the original instrument.”

For Lots/Tracts 38 through 44 inclusive, the specific language is: “said Tracts 38, 39, 40, 41, 42, 43, and 44 shall be used for single family dwelling home purposes only, except that professional offices for surgeons, physicians, osteopaths, chiropractors, dentists, attorneys, architects, realtors or engineers may be maintained thereon in conjunction with the use of the premises by any such professional persons for their own residential purposes as single family dwellings.” Note that retail sales was not an approved use.

- **In 1960**, owners of lot 42, artist Al Nestler and his wife Ernestine, requested approval from the other property owners to open a ~ 600 sq. ft. art gallery (to be named “La Galleria”) in accordance with the Deed Restrictions. They received the support of the property owners and built the gallery in their home and lived there as required by the Deed Restrictions. The gallery displayed art by local artists that was for sale in the gallery – there was no other sales area for the sale of merchandise outside the gallery – the remainder of the structure was their home. **Zoning in Coconino County was initiated in 1964. The subject property was subsequently placed in the C-RS-18,000 (Single-family Residential) zone classification along with other properties in the Broken Arrow subdivision in which it is located. (i.e. – Century 21 Real Estate office located on lot 43)** The gallery and its primary structures have operated on a legal, nonconforming basis since 1964. After Mr. Nestler’s death, the property continued to operate as a gallery, run by Mr. Nestler’s wife until the property was sold.
- **In 1981** William and Linda Robson purchased the property from Mrs. Nestler and they renamed the site **Son Silver West Gallery, Inc.** They immediately embarked on expanding the sales area both within the residence and without.

- In 1988, upon the City's incorporation, the city zoned the property residential (RS-18b) and the present Sedona Community Plan designates the properties as "Single Family Low Density". Thus the property retained the residential zoning established by Coconino County in 1964, both governmental entities acknowledging the residential charter set forth in the Deed Restrictions. The City issued a Conditional Use Permit allowing them to continue the existing operation as a nonconforming use with specific requirements, including a prohibition on expansion.
- In May 3, 1989, after an inspection of the property, the City of Sedona, issued a citation for a Zoning Ordinance violation related to the expansion of a nonconforming use (the gallery) without compliance with applicable City Ordinance requirements. As recently as 1986, the Coconino County Assessor's office records indicated that the 5,000 sq. ft. property area being used as an outside display and sales area had been assessed as vacant land. The Robson family stated they had made no material changes to the display areas associated with the previous owner and thereby enjoyed nonconforming "grandfather" status. **A bold misstatement of fact as the City had pictures from Coconino Assessor's office showing the property vacant in 1986;** however, the City chose not to take the issue to court as an enforcement action but to alternately allow the property owners to seek approval at public hearings for a zone change. The owner's zone change request was filed in 1991 but subsequently withdrawn. The Gallery continued to operate in violation of codes.
- On February 7, 1991, the applicant filed for a Conditional Use Permit request to allow for the expansion of nonconforming use, including the construction of a 12-space parking lot. This request was also withdrawn by the applicant. The Gallery continued to operate in violation of codes.
- On March 11, 1992, the applicants, William and Linda Robson of Son Silver West Gallery, again filed a similar Conditional Use Permit request to allow for the expansion of a nonconforming use. As suggested to them by the City, this request was designed to bring the existing retail space and the disputed expansions, in what is required to be a single-family residential zone, into compliance with City zoning requirements without the City having to take enforcement action. The Gallery continued to operate in violation of codes.
- On July 7, 1992, the site characteristics were cited by City staff as follows:
 1. 2,250 square feet of retail space in enclosed buildings.
 2. 5,000 square feet of outside retail display area.
 3. 1,950 square foot single family dwelling.
 4. 1,300 square foot pottery shop with kiln

5. 590 square feet of storage space
6. 750 square foot workshop
7. Sculpture
8. 2 free standing signs
9. Building coverage approximately 17%
10. Parking located between gallery and Highway 179

- **September 15, 1992**, the requested CUP was **approved with conditions that required them to not exceed the site characteristics as described above**. It allowed them to retain the existing 5,000 sq. ft. outside sales/display area and to construct a 12-space parking lot. At this point, they had been operating in violation of the CUP for 3 additional years. The Gallery continued to operate under the new CUP but did not meet the conditions required by that CUP and received numerous non-formal notices of violations from the Director of Community Development via phone and emails. See City Correspondence, meeting notes and public input at <http://www.sedonaaz.gov/Home/ShowDocument?id=26603> .
- **Jan 11, 2006 Notice of Violations given to Son Silver West**. Constructing buildings without building permits, without Fire District approval and violating setback requirements. Removing screening required by the 1992 CUP. Commercial storage on an undeveloped residential property. Ingress and egress through undeveloped residential property, Non-approved parking on residential property, creating a non-approved driveway without permitting. Utilizing 61 Arrow Drive for non-compliant storage and for employee parking. The unauthorized use of portable toilets and the unauthorized use of a resort information booth. While they did remove the portable toilets and the information booth, they were not in compliance with the 1992 CUP on signage, screening, lighting or expansion.
- **Oct 8, 2014** Audree Juhlin, current Director of the Community Development Department, issued a new 'Notice of violation' to the Robson's and Son Silver West Gallery for the Gallery's continued unauthorized expansion of the 92 CUP into 61 Arrow Dr. and 365 Bowstring Drive and 1535 SR179. They did not comply with the requested corrections.

- **Nov 10, 2015** a new Notice of Violation was issued listing the ongoing violations. Commercial food services, unauthorized structures, unauthorized expansions of outdoor sales space, unauthorized conversion of residential living space into sales areas, unauthorized parking, warehousing, manufacturing, shipping/receiving.

Please consider the history of this subdivision. It was established by the Owners as single family residential, it was zoned by the County as single family residential, it was zoned by the City as single family residential. It has always been intended from the very start to be a single family residential area. The original owners did make provision for “business lots”, but they intended them to be small cottage business conducted solely within the home in which the owners lived. They have made that very clear in the recorded restrictions.

Please consider the history of the Robsons and Son Silver West Gallery, Inc. They have violated the Deed restrictions, the City’s CUPs and City Code from the onset. The hundreds of pages of documentation on the City’s web site confirm their continual disregard for the intended use of the property and the City’s efforts to get them into compliance with City Code.

They should be held to the letter of the law on what they are allowed to have on the property. It should not be and cannot be more than what is specified in the 1992 CUP. Statute does not allow them to expand beyond what was present on the property at that time. The very building of a structure (with or without a permit) is an expansion that is not allowed. Their only remedy would be to convert the property back to the existing conditions at the time of the 1992 CUP to avoid City enforcement action.

Please help us maintain our single family neighborhood. What they had done by 1992 against the Deed Restrictions is enough for us to live with. They should never have been allowed to have anything outside their residence and should be required to live in the residence.

Sincerely
Eric Shrode
238 Paramount Dr.
Sedona, AZ 86336

From: Mike Presti <michaelphillippresti@yahoo.com>
To: <AJuhlin@sedonaaz.gov>
CC: <rio@sonsilverwest.com>
Date: 12/13/2015 8:19 AM
Subject: Son Silver West

This past week I had the pleasure of shopping at a business called Son Silver West. During my visit I noticed signs posted by the city of Sedona, when I asked about this I was told the city is trying to shut this business down. I can tell you one thing, as a village employee myself. You must be a bunch of idiots, this business was the absolute best business in the area for giving a feel of what Sedona was built on. In this day and age of cities and villages trying to bring in tax dollars, to try and shut down a business like this is quite frankly Stupid, In no way would this benefit the city or its residents. It also sounds illegal of the city to try and take away a business that has been in Sedona for more than 50 years. If you choose to try and shut this business down I hope they sue the city for millions. Before I visit again I will contact this business to see if they are still open, if not I will spend my money elsewhere.

Thank you
Michael Presti
Sent from my iPhone

From: Bonnie Smith <bsbonnielynn@gmail.com>
To: <AJuhlin@sedonaaz.gov>
Date: 12/12/2015 12:47 PM
Subject: Son silver west

We love Son Silver West. It would be a big mistake for Sedona to get rid of this unique store!! Ever time we visit Sedona we visit Son Silver West. Please reconsider.

Bonnie Smith

Sent from my iPhone

From: rio@sonsilverwest.com
To: jthompson@sedonaaz.gov
Subject: RE: Help
Date: 10-Dec-2015 16:29
Attachments: TEXT.htm [Save] [Open]
SSW.pdf [Save] [Open]
headers.822 [Save] [Open]
Mime.822 (excluded from export)
Creation Date: 10-Dec-2015 16:29
Message Id: 5669A873.Sedona.POA2.200.2000059.1.5105.1

We need you help to keep our business in Sedona

Please call me if you questions 928-380-5038

Thank you

Rio

From: Jon Thompson [mailto:JThompson@sedonaaz.gov]
Sent: Sunday, June 14, 2015 2:51 PM
To: Jon Thompson
Subject: Sedona Verde Valley Red Rock National Monument

Dear Friends,

If you care about protecting the antiquities, trails, soils, riparian habitat, and watershed of the fragile and sacred red rock area around Sedona, I urge you to become familiar with a new effort to have the President declare this area a national monument. A website just went live, which explains why this designation is necessary, the plan to make it happen, and how you may choose to help:

<http://sedonaverdevalleyredrocknationalmonument.org>

<<http://sedonaverdevalleyredrocknationalmonument.org/>> .



We Need Your Support!!!

La Galeria was established in 1960 along Highway 179. The Robson family purchased La Galeria in 1980 and has continued to own and operate Son Silver West gallery as a family business for 35 years!!



Son Silver West

is an outstanding landmark, offering unique and traditional western art embodying the beauty for which Sedona is renowned.

In November 2015,

Son Silver West received a Notice of Violation from the new City of Sedona Director of Development which attempts to overturn a 2011 decision by the City's prior Director of Development. Son Silver West relied upon the 2011 decision and has continued to operate its family business in compliance with that decision.

Son Silver West has appealed the Notice of Violation.

A Board of Adjustment hearing is scheduled for:

Tuesday, December 29th
at 9:00 am or earlier limited seating

To be held at:
Sedona City Hall
106 Roadrunner Dr.
Vultee Conference Room

The strength and character of our City is built upon the continuing success of small locally-owned businesses.

Son Silver West and the Robson family are asking for your support. The Gallery is one of Sedona's oldest family-owned businesses.

We need your support!!!

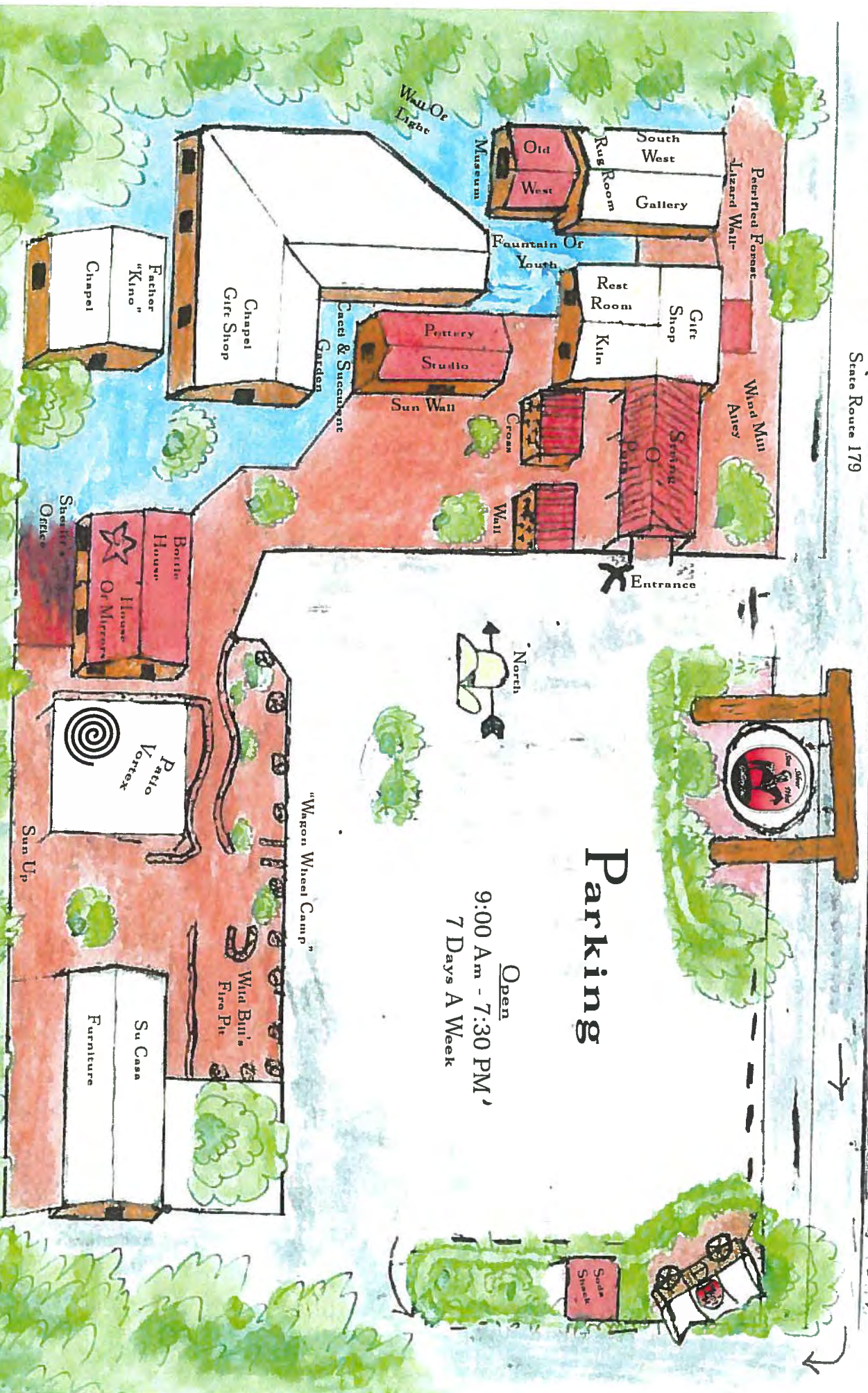


The finest in Southwestern art & fine art • 1476 State Route 179 Sedona, Arizona 86336. (928) 282-3580
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State Route 179

Parking

Open
9:00 AM - 7:30 PM,
7 Days A Week



Audree Juhlin - Son Silver West Gallery

From: Carl Jackson <carljackson@outlook.com>
To: "jclifton@sedonaaz.gov" <jclifton@sedonaaz.gov>, "ajuhlin@sedonaaz.gov" ...
Date: 12/9/2015 9:16 AM
Subject: Son Silver West Gallery
Cc: "eshrode@googlemail.com" <eshrode@googlemail.com>

Hello,

My wife and I have owned a home in Sedona at 240 Morgan Rd since 2005.

I am writing to you about my concern regarding various zoning/permit violations by Son Silver West Gallery.

I understand the City of Sedona issued a Notice of Violation to Son Silver on Nov 10th, and that a hearing is scheduled for 12/29. I will be unable to attend and wanted to express my concern directly to you.

My understanding is that Mr. Robson has a long history of violations and that the City of Sedona has failed to enforce them.

I am particularly disturbed by the alleged violations including warehousing, manufacturing, shipping/receiving and employee parking. I also understand he has applied to expand his parking lot.

The City needs to enforce its laws uniformly and violators should not be rewarded by having the City approve new zoning / permit requests. Please ensure that Son Silver is in compliance with the 1992 CUP.

Thank you,
Carl Jackson
240 Morgan Road

**Broken Arrow Coalition
238 Paramount Dr.
Sedona, AZ 86336**

December 8, 2015

Justin Clifton, Sedona City Manager
Audree Juhlin, Community Development Director

RE: Son Silver West Gallery, Inc. - Notice of Violation November 10, 2015

In this Notice of Violation (NOV) you have not addressed the issues of setback violations and we ask that you amend the notice to do so. We also noted that the fire code violations are not mentioned, however that may be the Fire Department's venue and not the City's – in any case for public safety, they should be made to comply with all fire codes.

In addition, we noted that there are four instances where corrective action calls for Son Silver West to apply for a building permit after the fact. (listed below) We find this option to get into compliance to be unacceptable. The very fact that they built a structure is in violation of the 1992 CUP under which they are operating. It has been made clear to them in a number of communications by the City that they are not allowed to expand beyond the conditions in the 1992 CUP. The ONLY remedy to get them into compliance would be the removal of any structures not specifically listed in the 1992 CUP.

The City has pulled the business license of ***Chocola Tree*** for non compliance with a NOV. We expect you to do the same for Son Silver West until they get into compliance. It is long past time that the City enforces their Code fairly and uniformly.

Eric Shrode

Cc: Stephen Swartz, Attorney at Law

Editor, Red Rock News

- A.3 ***CORRECTIVE ACTION:*** *Submit an application for a compliant building permit for the block wall constructed on 61 Arrow Drive and 1476 SR179 without a permit or remove wall within 30 days of the date of this Notice.*
- A.5 ***CORRECTIVE ACTION:*** *Revert "Chapel" back to its approved use as a shed or submit a new building permit application for consideration as a "Chapel" use within 30 days of the date of this Notice.*

- D.6 ***CORRECTIVE ACTION:*** *Submit building permit applications for the shade structures erected and/or expanded without prior approvals within 30 days of the date of this Notice.*
- D.7 ***CORRECTIVE ACTION:*** *Submit a building permit application for the wall/fence erected along the backside of the property without prior approvals within 30 days of the date of this Notice.*

Sen Silas West & City of Sedona

Recently we spent 5 days @ Sedona and had a wonderful time. We were determined to return with even more of our family next time.

Then when shopping we came upon "Our Father Kino Chapel", we saw a note that said you were trying to shut it down? Say it ain't so.

It ruined our trip to some extent to think that anyone would want to do what you are ^{TRYING TO} accomplish. There is room for all faiths in Sedona and in all America. It is part of our rights as Citizens. Please explain or cite any extenuating circumstances we may not know about.

Our only recourse is to tell everyone we know about this little chapel and that the city is trying to shut it down.

If you are in fact trying to shut it down, we will never return to such a hateful vacation Venue.

Sincerely,

John Dugwell
2616 Jades Ferry Road
Powhatan, Virginia 23139

Audree Juhlin - Son Silver West

From: Eric Shrode <eshrode@googlemail.com>
To: Audree Juhlin <AJuhlin@sedonaaz.gov>
Date: 11/27/2015 4:17 PM
Subject: Son Silver West
Attachments: 20151127_150101.jpg

11/27/2015 Still parking people on the South lot. This activity can be stopped today with a simple chain barrier. Blatant disregard for the NOV. Time to start the fines and/pull their license.



8. Appeal Application Documents (provided by the applicant and distributed in early December 2015)

Board of Adjustment
Variance Consideration
Appeal of Administrative Interpretation



City Of Sedona
Community Development Department
102 Roadrunner Drive Sedona, AZ 86336
(928) 282-1154 • Fax: (928) 204-7124

Request for:

- ☐ Variance Consideration
☒ Appeal of Administrative Interpretation

Date Rec'd:	
Case #:	
Fee Paid:	

Property/Business Owner Information:

☐ Primary Contact

Name:	Son Silver West Gallery, Inc. (see attachment)	Phone:	
Address:	1476 State Route 179, Sedona, Arizona 86336	Cell Phone:	
E-mail:	rio@sonsilverwest.com		

Authorized Agent (if applicable) Information:

☒ Primary Contact

****Please attach a letter of authorization from property/business owner (see attached Authorization Letters)**

Name:	Francis J. Slavin, Esq. of Francis J. Slavin, P.C.	Phone:	602-381-8700
Address:	2198 East Camelback Road, Suite 285, Phoenix, Arizona 85016	Cell Phone:	Fax: 602-381-1920
E-mail:	b.slavin@fjslegal.com ; h.dukes@fjslegal.com		

Pursuant to the City of Sedona Land Development Code, this is a formal request for a variance consideration or appeal of an administrative interpretation regarding the following:

Note: Requestor should be as specific as possible regarding the reasons for the variance consideration or appeal and refer to the specific sections of the Sedona Land Development Code being contested. (Attach additional pages if more space is required)

Interpretations and Enforcement Decisions Made by Community Development Director Audree Juhlin in the 2 notices of violation and a memorandum issued to Son Silver West Gallery, Inc. and the Robsons dated November 10, 2015.

Specific issues on appeal to the Sedona Board of Adjustment are set forth in the attached narrative submitted by Francis J. Slavin, P.C. dated November 25, 2015.

Signature:		Date:	11.25.15
Print Name/Title:	FRANCIS J. SLAVIN, Counsel and Authorized Agent		

**Property and Business Owners Appealing Decision of Community Development Director
November 25, 2015**

Son Silver West Gallery, Inc.

1476 State Route 179
Sedona, Arizona 86336

Linda Rose Robson and William B. Robson

Trustees of the Linda Rose Robson Living Trust dated July 12, 1999

1476 State Route 179
Sedona, Arizona 86336

Tracts 42 and 41 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-012A

Linda Rose Robson and William B. Robson

Trustees of the Linda Rose Robson Living Trust dated July 12, 1999, and

Linda Rose Robson and William B. Robson

Trustees of the William B. Robson Living Trust dated July 12, 1999

1535 State Route 179
Sedona, Arizona 86336

Tract 40 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-011

Rio Cody Robson

61 Arrow Drive
Sedona, Arizona 86336

Tract 45 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-016

Linda Rose Robson and William B. Robson

Trustees of the William B. Robson Living Trust dated July 12, 1999, and

William B. Robson and Linda Robson

365 Bowstring Drive
Sedona, Arizona 86336

Tract 49 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-020

November 25, 2015

VIA HAND-DELIVERY

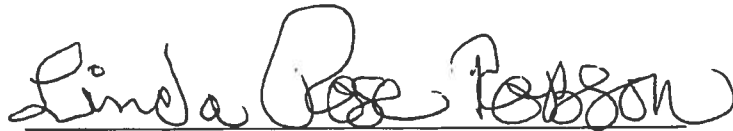
Mr. Joel Gilgoff, Chairman
CITY OF SEDONA
Board of Adjustment
102 Roadrunner Drive
Sedona, Arizona 86336

**RE: Son Silver West Authorization Letter for Appeal of Director's Interpretation
and Decision to Board of Adjustment**

Dear Chairman Gilgoff:

On behalf of Son Silver West Gallery, Inc., the William B. Robson Living Trust, dated July 12, 1999, and the Linda Rose Robson Living Trust, dated July 12, 1999, we hereby authorize the Law Offices of Francis J. Slavin, P.C. to submit an appeal of the Community Development Director's decisions and interpretations issued as part of the two Notices of Violation and the Memorandum dated November 10, 2015, as applicable to Tracts 40, 41, 42, and 49 of the Broken Arrow Subdivision, recorded at Book 2 of Maps, Page 71, Official Records of the Coconino County Recorder's Office.

Yours very truly,

A handwritten signature in black ink that reads "Linda Rose Robson". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

Linda Rose Robson

Trustee of the Linda Rose Robson Living Trust dated July 12, 1999
Trustee of the William B. Robson Living Trust dated July 12, 1999
President/CEO of Son Silver West Gallery, Inc.

A handwritten signature in black ink that reads "William B. Robson". The signature is fluid and cursive, with the first name "William" being the most prominent.

William B. Robson

Trustee of the Linda Rose Robson Living Trust dated July 12, 1999
Trustee of the William B. Robson Living Trust dated July 12, 1999

November 25, 2015

VIA HAND-DELIVERY

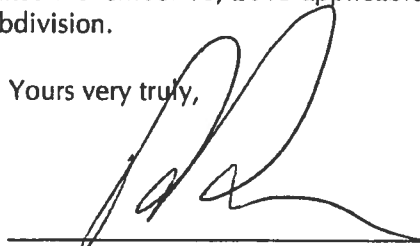
Mr. Joel Gilgoff, Chairman
CITY OF SEDONA
Board of Adjustment
102 Roadrunner Drive
Sedona, Arizona 86336

**RE: Son Silver West Authorization Letter for Appeal of Director's Interpretation
and Decision to Board of Adjustment**

Dear Chairman Gilgoff:

On behalf of Son Silver West Gallery, Inc., Robson Design, and as the individual property owner of Tract 45 of the Broken Arrow Subdivision, recorded at Book 2 of Maps, Page 71, Official Records of the Coconino County Recorder's Office, I hereby authorize the Law Offices of Francis J. Slavin, P.C. to submit an appeal of the Community Development Director's decisions and interpretations issued as part of the two Notices of Violation and the Memorandum dated November 10, 2015 applicable to Tracts 40, 41, 42, 45 and 49 of the Broken Arrow Subdivision.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Rio Cody Robson', written over a horizontal line.

Rio Cody Robson
Owner of Tract 45 of Broken Arrow Subdivision
Vice-President of Son Silver West, Inc.
Representative of Robson Design

SON SILVER WEST APPEAL TO SEDONA BOARD OF ADJUSTMENT
November 25, 2015

I. INTRODUCTION

Visitors traveling north along State Route 179 are welcomed to Sedona by a familiar oval sign hung between large wooden posts with the outline of a Native American chief mounted atop a horse, his feathered headdress prominent against a fading red sunset. To many of Sedona's visitors and residents, the Son Silver West sign is a landmark as familiar as the majestic, multi-hued red rocks which tower above the landscape, embodying the traditional western art and unique beauty for which Sedona is renowned. For 34 years, the Robson family has molded and refined its Son Silver West business to become one of the most successful and widely recognized art galleries in this community, the State and the Southwest. Their passion for art coupled with dedication, hard work and creativity has drawn repeat visitors and residents of Sedona alike to its location at 1476 SR 179. As one of the longest operating family-owned small businesses in Sedona, Son Silver West continues to contribute to the distinctive Sedona experience as well as the long-term financial viability of the community.



In 1960, buildings were constructed on Tract 42 of the Broken Arrow Subdivision, which is the current location of the main buildings on the Son Silver West Property. It was at that time the former "La Galleria" began operating as a commercial art gallery with outdoor retail space on Tract 42 by Mary Ernestine Nestler Todd and her late husband.¹ The La Galleria was in operation prior to Coconino County adopting its first zoning ordinance in 1964.² Thus, the gallery and its primary structures on Tract 42 have operated as a legal non-conforming use since 1964.³

In 1981, Bill and Rose Robson purchased what was then known as La Galleria and moved to Sedona from northern California. During the first few years of Son Silver West's

¹ See "Background" section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as Exhibit "3".

² *Id.*

³ *Id.*

existence, the Robsons struggled to make ends meet while operating the art gallery. The Robsons searched for ways to revitalize their new business to attract main-stream customers living in and traveling to Sedona. Bill Robson, a ceramicist by education and training, began making and selling pottery and periodically loaded up his pick-up truck hauling strings of chilies purchased in New Mexico to sell the ever-popular chilies at Son Silver West. The Robson's ingenuity saved Son Silver West in those early years and allowed them to adjust their business model to meet ever-changing retail demands over the next 3 decades.

The Robson's eventually came to learn that their boundless ingenuity that helped jump-start Son Silver West was to be tempered by zoning restrictions. Shortly after Sedona incorporated in 1988, the City of Sedona rezoned the commercial art gallery, workshop, and retail use for single family residential use! By state law, the Robsons were allowed to continue doing business as a legal non-conforming use. In 1992, a conditional use permit was approved by the City Planning and Zoning Commission allowing the expansion of the Son Silver West legal non-conforming use onto an adjoining parcel of land to the south, Tract 41. Since 1992, the Robsons have obtained various approvals and permits from the City of Sedona to erect additional buildings, shade structures and fences. From time to time, the Robsons received interpretations and also notices of violation from former Community Development Director John O'Brien arising from the Son Silver West legal non-conforming use status. In these prior occasions, the Robsons either undertook corrective action required by Director O'Brien or submitted evidence demonstrating compliance with their legal non-conforming use status to the satisfaction of the Director.

Director O'Brien performed an inspection of the Son Silver West property in connection with a pending enforcement action and issued a formal decision on December 21, 2011 finding the Son Silver West property to be in compliance with no outstanding violations (the "**December 21, 2011 Decision**"). Since the issuance of the December 21, 2011 Decision, the uses, buildings, and structures on the Son Silver West property have remained the same. The Robsons rightfully relied upon the December 21, 2011 Decision from Director O'Brien, thereafter expending substantial sums of money investing in their business with an assurance that their Son Silver West property was in compliance with City codes and their existing zoning and building permit approvals.

Director O'Brien retired in July of 2012. He was replaced by Kevin Snyder from the City of Auburn, Washington. Fast-forwarding almost 3 years after Director O'Brien's December 21, 2011 Decision, the Robsons received a Notice of Violation from the newly appointed Community Development Director, Audree Juhlin, dated October 8, 2014 (the "**2014 NOV**"). The 2014 NOV was limited to alleged violations for the following parcels owned by the Robsons, which are located adjacent to Son Silver West Tracts 42 and 41: (1) a residence located on Tract 45 with an address of 61 Arrow Drive, (2) a residence located on Tract 49 with an address of 365 Bowstring, and (3) a vacant Tract 40 with frontage along SR 179 and adjacent to the Son Silver West parking lot on the south. The 2014 NOV did not address any violations on the Son Silver West Property (Tracts 42 and

41), having the legal effect of ratifying the prior December 21, 2011 Decision as a formal, binding decision of an authorized City official.

After evaluating their options and with the encouragement of Director Juhlin, the Robsons decided to pursue a Community Plan amendment and rezoning approval for Planned Development zoning on Tracts 40, 41, 42 and 45. Enforcement of the 2014 NOV was placed on hold by Director Juhlin while the Robsons processed these applications. The Robsons held an initial neighborhood meeting to explain their plan and received positive feedback. Unforeseeably, the Robsons were met with opposition at their second neighborhood meeting. Despite the Robson's attempts to amend their pending applications to rezone only the existing Son Silver West Property and the vacant Tract 40 to Planned Development zoning district, the mounting opposition and resulting negative staff report forced the Robsons to withdraw their Community Plan amendment and rezoning applications in August of 2015.

On September 9, 2015, the Robsons and their legal counsel met with Director Juhlin, City Attorney Robert Pickels and City Manager Justin Clifton. The purpose of the meeting was to discuss the City's plan to commence enforcement proceedings under the 2014 NOV as well as additional alleged violations for the Son Silver West Property. The additional violations alleged by Director Juhlin directly contradicted the December 21, 2011 Decision by former Director O'Brien. With the agreement of the City, the Robson's counsel submitted a legal memorandum dated September 22, 2015 providing the history of the Son Silver West business operations and its legal non-conforming use rights, the history of related City approvals, enforcement actions and decisions, the binding effect of Director O'Brien's December 21, 2011 Decision and the Robson's reliance thereon, and the Robson's vested rights on the Son Silver West Property. A copy of the SSW Memorandum dated September 22, 2015 and the attached exhibits provided to Director Juhlin are submitted herewith as **Exhibit "A."**

The evidence submitted in the SSW Memorandum was altogether rejected by the City. Director Juhlin proceeded to serve the Robsons and Son Silver West with 2 additional Notices of Violation dated November 10, 2015 (the "**2015 NOV**") as well as a memorandum providing Director Juhlin's interpretation and decision regarding the authority of former Director O'Brien to render his December 21, 2011 decision (the "**Director's 2015 Memorandum**").⁴

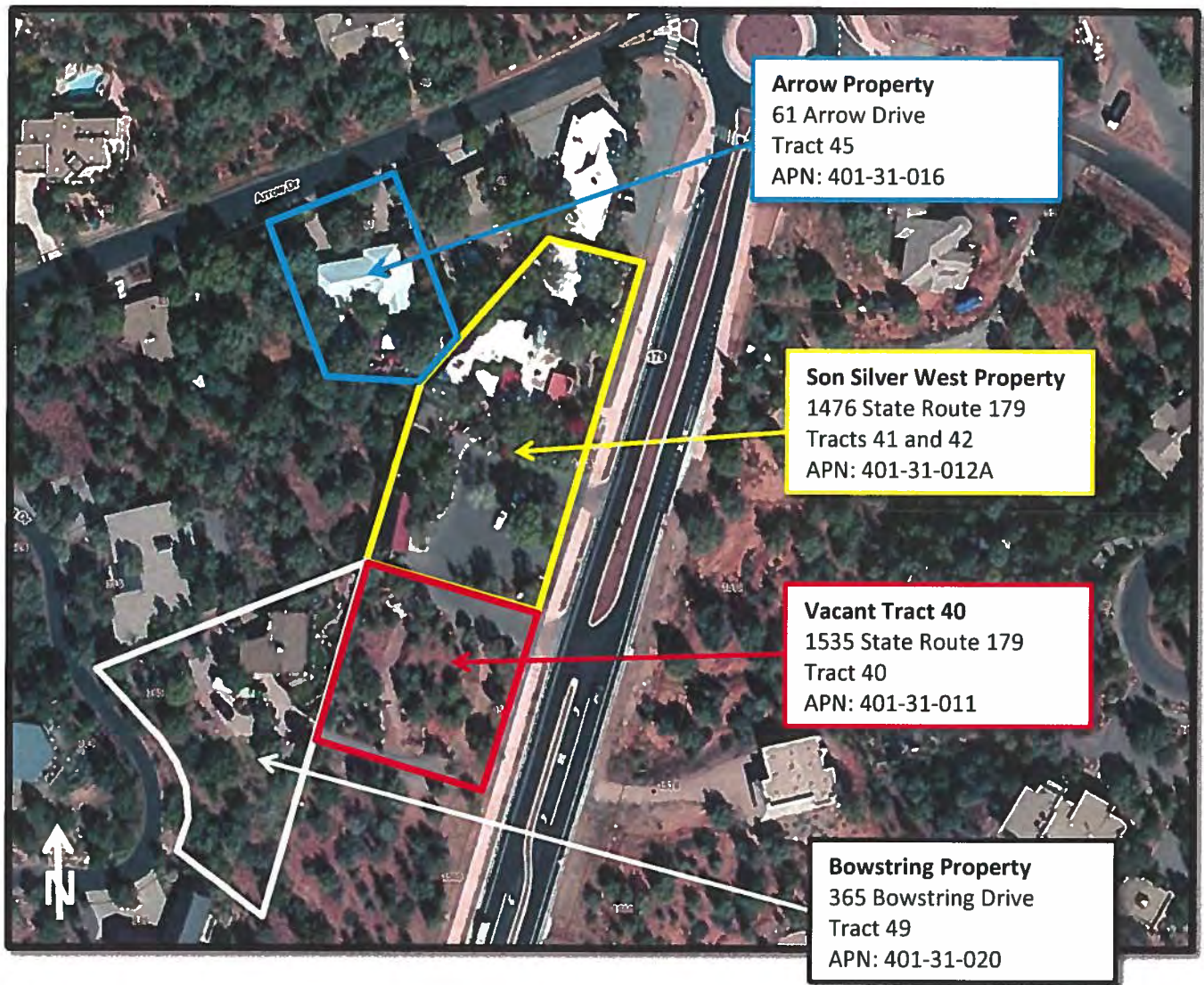
As a result, on behalf of clients Son Silver West Gallery, Inc. and the Robsons, Francis J. Slavin, P.C. hereby submits this appeal to the Sedona Board of Adjustment arising from the interpretations issued by the Community Development Director as set forth in the 2015 NOVs and the Director's 2015 Memorandum dated November 10, 2015 with regard to the following properties:

⁴ City Attorney Robert Pickels later authored a letter to Attorney Francis (Buzz) Slavin dated November 24, 2015 which set forth his reasoning questioning the scope of former Director John O'Brien's authority.

**PROPERTIES OWNED BY ROBSONS WITHIN BROKEN ARROW SUBDIVISION
LYING ALONG WEST SIDE OF SR 179 & SOUTH OF ARROW DRIVE-MORGAN ROAD ROUNDABOUT**

Address	Assessor's Parcel No.	Broken Arrow Tract No.	Parcel Size	Property Owner	Referenced Terms in this Memorandum
1476 State Route 179	401-31-012A	Tract 42 & 41	0.83 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to collectively as "Son Silver West Property" or individual tracts as "Tract 42" & "Tract 41"
1535 State Route 179	401-31-011	Tract 40	0.48 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to as "Vacant Tract 40"
61 Arrow Drive	401-31-016	Tract 45	0.38 ac	Rio Cody Robson	Referred to as "Arrow Parcel"
365 Bowstring Drive	401-31-020	Tract 49	0.65 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to as "Bowstring Parcel"

COCONINO COUNTY ASSESSOR'S PARCEL MAP OF SON SILVER WEST AND ROBSON PROPERTIES



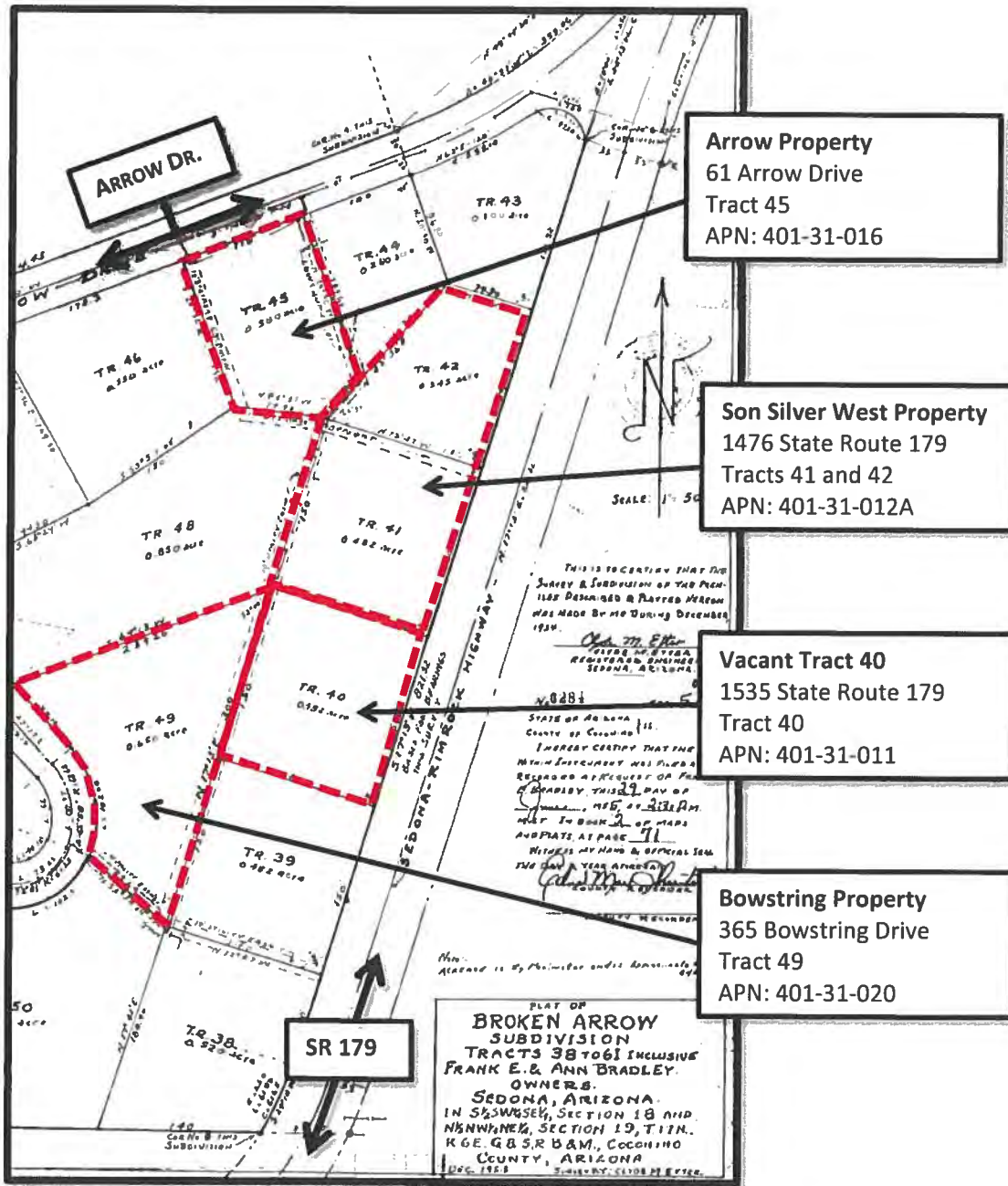
II. HISTORY

Our firm provides the following abbreviated statement of facts with regard to Son Silver West based upon records that were made available on the City of Sedona website and records provided by the Robsons.

- A. **The Broken Arrow subdivision plat was recorded on June 29, 1955** at Book 2 of Maps Page 71, Official Records of Coconino County Recorder ("CCR") (hereinafter the "**Broken Arrow Plat**").⁵ The following lots designated on the Broken Arrow Plat are currently owned by the Robsons:

⁵ Broken Arrow Plat is attached to SSW Memorandum as **Exhibit "1"**.

BROKEN ARROW PLAT, BOOK 2 OF MAPS, PAGE 71, CCR



B. Deed Restrictions for the Broken Arrow subdivision were recorded on July 21, 1955 in Book 77, Page 509, CCR.⁶ The Deed Restrictions state in part as follows:

⁶ See Deed Restrictions attached to SSW Memorandum as Exhibit "2".

9. The forgoing restrictions and covenants run with the land and shall be binding on all owners of said Tracts and all persons claiming under then [sic] until January 1, 1966, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a majority of the then owners of the Tracts, it is agreed to change the said covenants in whole or in part.

...

13. The business district shall be confined to those Tracts numbered 38 to 44 inclusive, fronting on Sedona Rimrock Highway.

As set forth in Paragraph 13 of the Deed Restrictions, the developer of the Broken Arrow subdivision contemplated business uses on tracts lying along the west side of State Route 179, including the Son Silver West Property and Vacant Tract 40.

- C. **In 1960, buildings were constructed and the former "La Galleria" began operating as a commercial art gallery with outdoor retail space on Tract 42** by Mary Ernestine Nestler Todd and her late husband.⁷ The La Galleria was in operation when Coconino County adopted its first zoning ordinance and initiated residential zoning for Tract 42 in 1964.⁸ Thus, the gallery and its primary structures on Tract 42 were allowed to continue to operate as a legal non-conforming use since 1964.⁹

According to a letter from Ms. Todd to former Sedona Community Development Director Tom Schafer dated February 2, 1990¹⁰, during the Todd's ownership of La Galleria from 1960 to 1981, the Todds "conducted the outdoor display of pottery, chimes, chilies, and southwestern art-and-craft items." Ms. Todd also states in her letter that the "outdoor display area and gallery presently maintained by the Robsons is compatible with that which was done at that location in my previous business."

- D. **In 1964, Coconino County adopted its first zoning ordinance and initiated C-RS-18,000 (Single Family Residential) zoning for all property located within the Broken Arrow subdivision, including the La Galleria on Tract 42.**¹¹ The initial

⁷ See "Background" section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as Exhibit "3".

⁸ *Id.*

⁹ *Id.*

¹⁰ See Letter from Ms. Todd to Director Tom Schafer attached to SSW Memorandum as Exhibit "4A".

¹¹ See "Background" section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as Exhibit "3".

zoning of Tract 42 to a single family residential zoning district rendered the La Galleria commercial art gallery and associated outdoor retail display areas a legal non-conforming use under Ariz. R. Stat. § 9-462.02(A).

- E. **On January 20, 1981, Tract 42 and the La Galleria were purchased by William B. and Linda Rose Robson** by Joint Tenancy Deed recorded in Book 820, Page 872, CCR.¹² At the time of the Robson's purchase, the commercial gallery and associated retail uses on Tract 42 remained a legal non-conforming use within the unincorporated territory of Coconino County. The City of Sedona was not incorporated until 1988. From 1981 to the present, the Robsons have continuously operated the commercial art gallery and associated retail uses as a legal non-conforming use, renaming the "La Galleria" as "Son Silver West."
- F. **On March 4, 1987, William B. and Linda Rose Robson purchased Tract 41** by deed recorded in Book 1144, Page 786, CCR.¹³ At the time of the Robsons purchase, Tract 41 was located within the unincorporated territory of Coconino County.
- G. **The City of Sedona was incorporated in January 1988.** Upon incorporation, the City of Sedona adopted an interim zoning code and placed residential zoning on the Son Silver West Property comparable to the existing Coconino County C-RS-18,000 zoning district.
- H. **On August 16, 1991, the City of Sedona approved Son Silver West's plans to repair the roof and structure of an existing chili cage on Tract 42 located on the east side of the existing gallery building along Highway 179.**¹⁴ According to the Son Silver West records recently posted to the City of Sedona FTP site on November 24, 2015, final inspections of the chili cage repairs were performed by the City on October 17, 1991.¹⁵ Pictures attached to the City's 1991 chili cage permit records show strings of chilies being dried and sold on the Son Silver West Property.¹⁶

¹² Joint Tenancy Deed conveying Tract 42 from Mary Ernestine Nestler Todd to William Robson and Linda Rose Robson attached to SSW Memorandum as **Exhibit "4B"**.

¹³ Joint Tenancy Deed conveying Tract 41 from John T. Brooks and Sally M. Brooks to William Robson and Linda Rose West Robson attached hereto as **Exhibit "B"**.

¹⁴ See approved Chili Cage Plan, attached to SSW Memorandum as **Exhibit "5"**.

¹⁵ See Permit No. B1517 issued for Chili Cage repair, attached hereto as **Exhibit "D"**.

¹⁶ *Id.*

Coconino County Assessor Parcel Map – Location of Permitted Chili Cage



- I. On November 26, 1991, the Sedona City Council adopted the first Sedona Community Plan which designated the Son Silver West Property as Commercial on the Land Use Map.¹⁷
- J. On September 5, 1992, the Sedona Planning and Zoning Commission approved Case No. CUP 92-3, granting a conditional use permit for the Son Silver West Property which allowed expansion of the Son Silver West legal non-conforming use onto Tract 41 (hereinafter the "1992 CUP").¹⁸ At the time of

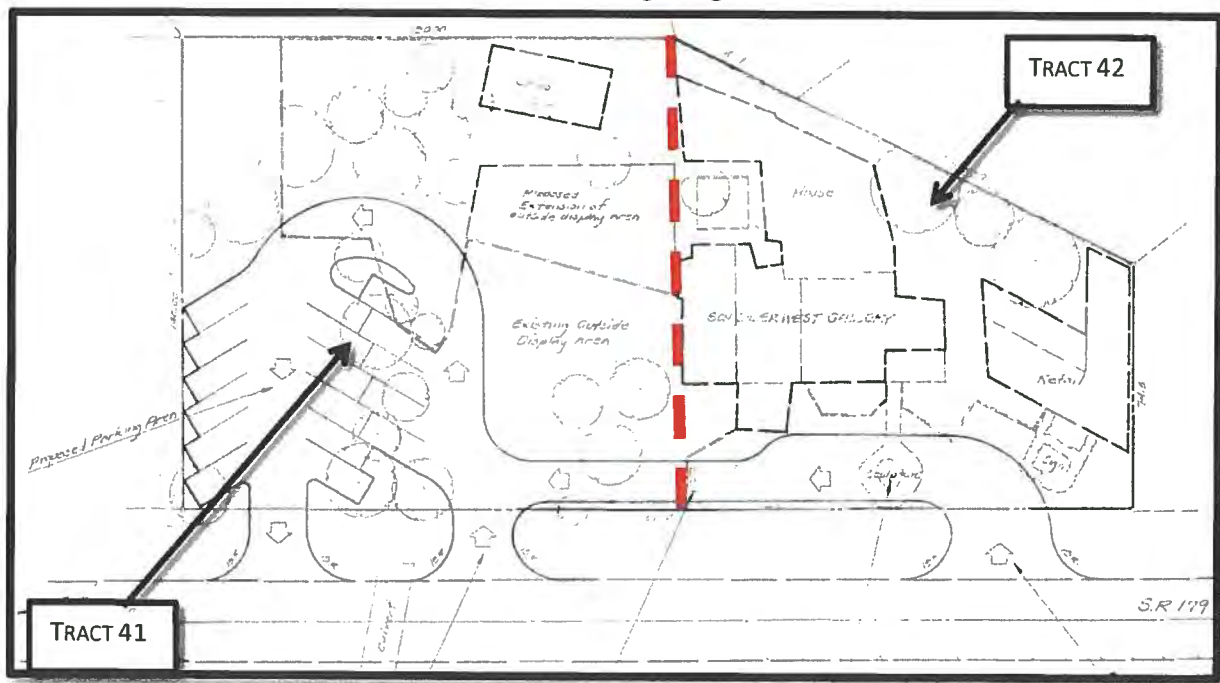
¹⁷ See "Analysis" section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992, page 6, attached to SSW Memorandum as **Exhibit "6"**.

¹⁸ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit "3"**; See also Minutes from the September 15, 1992 Planning and Zoning Commission hearing attached to SSW Memorandum as **Exhibit "8"**; See also Letter from Sedona Associate Planner John O'Brien to Robsons dated September 21, 1992 attaching final conditions of approval for Case No. CUP 92-3, attached to SSW Memorandum as **Exhibit "9"**; See also Site Plan prepared by Shephard-Wesnitzer, Inc. dated April 4, 1992, Job No. 91038, submitted by Robsons to City of Sedona and approved as part of CUP 92-3 as "Alternative Site Plan #2", attached to SSW Memorandum as **Exhibit "10"**.

approval of the 1992 CUP, Section 204.01 of the Sedona Interim Zoning Ordinance provided for the expansion of non-conforming uses through the administrative approval of a conditional use permit by the Planning & Zoning Commission. The option for obtaining a conditional use permit to expand a legal non-conforming use has since been deleted from the Sedona Land Development Code.

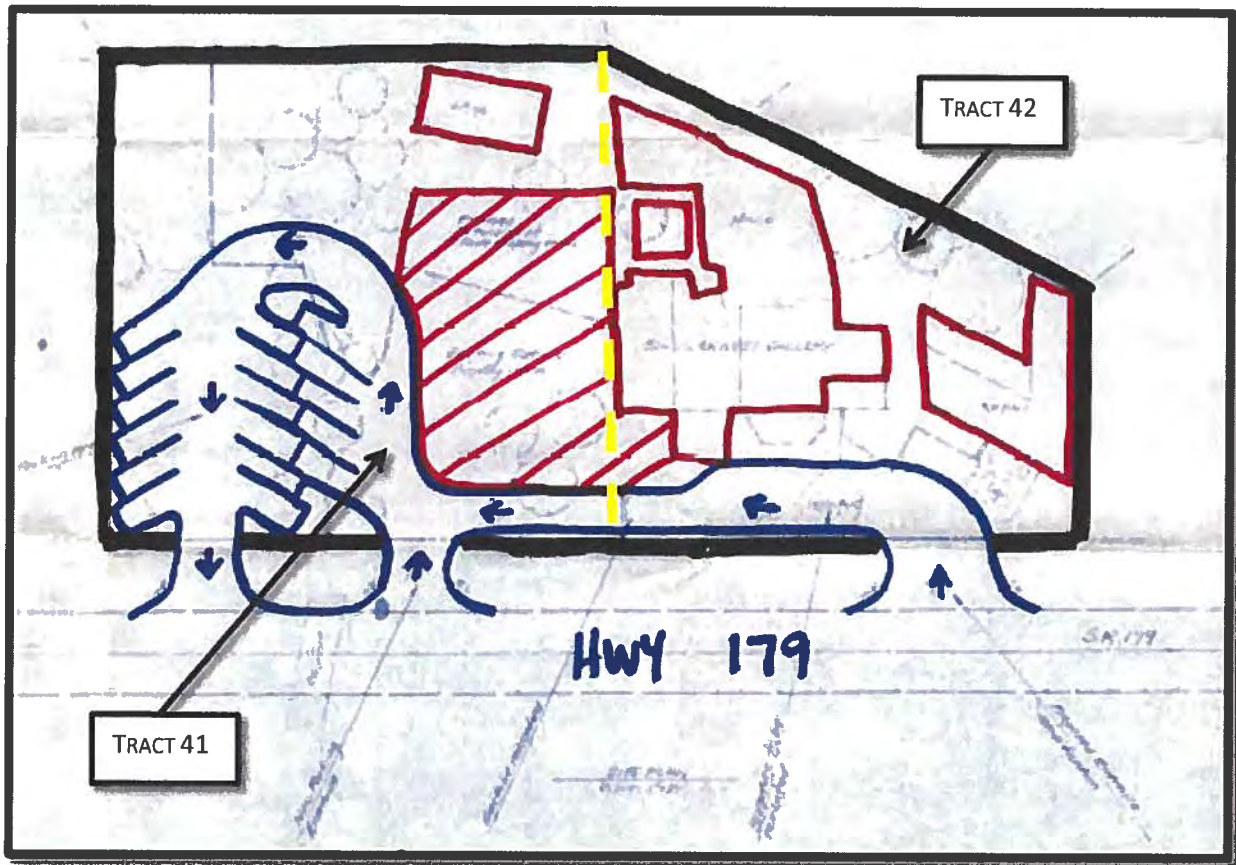
As part of the Robson's 1992 CUP application, a schematic site plan drawn to scale was prepared by Shephard-Wesnitzer, Inc. dated April 4, 1992, Job No. 91038 (the "1992 Plan") which showed the following improvements and uses as of April of 1992: (1) the art gallery, enclosed retail, art workshop and residential uses on the Son Silver West Property, (2) the proposed relocation and expansion of the parking area from Tract 42 to Tract 41 and reconfiguration of the on-site traffic circulation, and (3) the outside retail display area to be expanded in the northern area of Tract 41. This 1992 Plan was submitted by the Robsons to the City of Sedona and was approved with a hand-drawn overlay sketch as "Alternative Site Plan #2" (shown with red and blue overlay on following page).¹⁹

1992 PLAN LATER ADOPTED AS "ALTERNATIVE SITE PLAN #2" BY PLANNING AND ZONING COMMISSION
***With FJS, PC Annotations Designating Tracts 41 and 42**



¹⁹ See larger size of Site Plan prepared by Shephard-Wesnitzer, Inc. dated April 4, 1992, Job No. 91038, submitted by Robsons to City of Sedona and approved as part of CUP 92-3 as "Alternative Site Plan #2", attached to SSW Memorandum as **Exhibit "10"**.

ALTERNATIVE SITE PLAN #2 APPROVED WITH CUP 92-3 ON SEPTEMBER 15, 1992
*With FJS, PC Annotations Designating Tracts 41 and 42



The location of the additional 5,000 s.f. of outdoor retail display area to be expanded onto Tract 41 is shown on Alternative Site Plan #2 with diagonal red lines. This expanded outdoor retail display area measures approximately 60 feet by 90 feet. The 1992 Plan and the Alternative Site Plan #2 do not identify the locations of the outdoor retail display areas which were then existing on Tract 42. The Robsons steadfastly maintain that virtually all of the outdoor area on Lot 42 was used for retail display, except for the parking area lying between the gallery and SR 179.

The 1992 CUP was approved by the Planning and Zoning Commission subject to certain conditions of approval²⁰, which are at issue in this appeal:

1. Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated

²⁰ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit "3"**; See also Letter from Sedona Associate Planner John O'Brien to Robsons dated September 21, 1992 attaching final conditions of approval for Case No. CUP 92-3, attached to SSW Memorandum as **Exhibit "9"**; See also larger size of this "Alternative Site Plan #2", attached to SSW Memorandum as **Exhibit "10"**.

September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2).

- ...
6. The outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.
- ...
9. All other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.

Condition No. 1 to the 1992 CUP limits the uses and physical improvements on the Son Silver West Property to those characterized in both the staff report dated September 15, 1992 (the "1992 Staff Report") and the Alternate Site Plan #2. Unfortunately, the square footages of the buildings and uses measured on the scaled version of Alternate Site Plan #2 do not match the uses and square footages identified in the 1992 Staff Report. A comparison of the uses and square footages identified in the 1992 Staff Report versus the uses and square footages provided in Alternate Site Plan #2 is set forth below:

1992 STAFF REPORT ²¹		ALTERNATE SITE PLAN # 2 ²²	
USE	SQUARE FOOTAGE	USE	SQUARE FOOTAGE
Retail space in enclosed buildings	2,250 s.f.	Retail Son Silver West Gallery	4,328 s.f.
Additional outside retail display area on Tract 41	5,000 s.f.	Outdoor retail display area on Tract 41	5,400 s.f.
Single-family dwelling	1,950 s.f.	House	1,950 s.f. (483 s.f. at southwest corner of House used as Art Studio)
Pottery shop with kiln	1,300 s.f.	—	—
Storage space	590 s.f.	—	—
Workshop	750 s.f.	Shop	740 s.f.
Parking located between gallery and Highway 179	N/A	Parking proposed at south end of Property on Tract 41	N/A

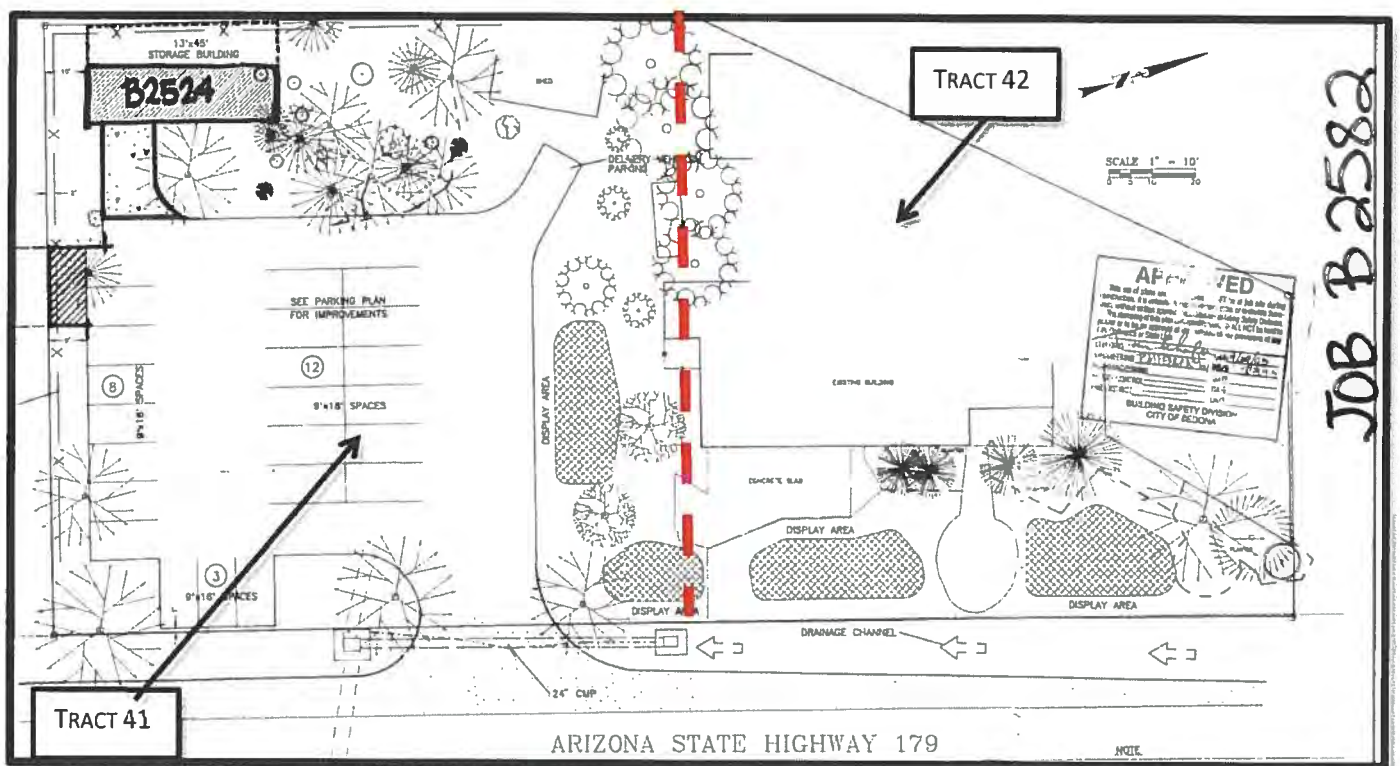
²¹ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit "3"**

²² See "Alternative Site Plan #2", attached to SSW Memorandum as **Exhibit "10"**.

- K. On September 29, 1993, the former Community Development Director Tom Schafer approved a Site Plan, Highway 179 Paving & Striping Plan, and Parking Plan prepared for the Son Silver West Property by Shephard-Wesnitzer, Inc. dated September 1993, Job No. 91038 (the "1993 Plan").²³ The 1993 Plan contains a City of Sedona Building Safety Division "Approved" stamp as well as large handwriting referencing "JOB B2582" and "B2524". The "B2524" number is placed on top of a 13' x 45' building located at the southwest corner of Tract 41, evidencing the City's issuance of a building permit for that structure.

1993 PLAN APPROVED BY FORMER COMMUNITY DEVELOPMENT DIRECTOR SCHAFER

***With FJS, PC Annotations Designating Tracts 41 and 42**



The 1993 Plan approved by Director Schafer shows an approximate 30-foot wide outdoor retail display area lying along the north side of Tract 41 and south of the gallery building that was existing at the time of the CUP approval in 1992. Based upon the approximate 60-foot width of the outdoor display area shown on the prior 1992 Plan and Alternative Site Plan #2, it is obvious that the display area existing along the north side of Tract 41 at the time of the CUP approval was reduced by almost half in order to accommodate the new parking area on Tract 41. Not by coincidence, the 1993 Plan also shows outdoor retail "display

²³ See 1993 Plan attached to SSW Memorandum as Exhibit "11".

areas” within the entire north-south area lying between the existing Tract 42 gallery and retail buildings on the west and the drainage channel abutting Highway 179 on the east. This additional outdoor display area shown on Tract 42 along Highway 179 on the 1993 Plan, formerly occupied by the original parking area of the gallery, was relocated from the 5,000 s.f. outdoor display area approved along the north side of Tract 41 by the CUP. Thus, in 1993, Director Schafer approved these outdoor retail display areas as they currently exist today.

Coconino County Assessor Parcel Map – 1993 Plan Approvals



The buildings and the outdoor retail display areas located interior to Tract 42 are not depicted on the 1993 Plan due to the nature of the plans. The 1993 Plans were submitted for issuance of building permits related to the new parking area on Tract 41, improvements to Highway 179, and the construction of a new building at the southwest corner of Tract 41. Providing a detailed plan of the existing improvements and uses within the interior of Tract 42 was not necessary for the issuance of those permits.

- L. As of June 7, 1994, the new parking lot had been constructed on Tract 41.²⁴**
- M. On June 7, 1994, former Community Development Director Tom Schafer and the Robsons entered into an agreement with regard to the Robson's future compliance with CUP Condition Nos. 4, 6, 8, 9, and 10 as summarized below:**
- Condition No. 4 – The Robsons agreed that all required improvements to Hwy. 179 would be commenced no later than April 1, 1995 and completed no later than July 1, 1995.
 - Condition No. 6 – The Robsons agreed that earthen berms and screen landscaping would be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994 and October 1, 1994, respectively. A combination of earthen berming, landscaping and rustic fencing was also required in order to satisfy any additional visual screening requirements of all outside display areas as approved by the Director no later than October 1, 1994. (Emphasis added).
 - Condition No. 8 – The Robsons agreed that all mercury vapor lighting would be eliminated no later than August 1, 1994.
 - Condition No. 9 – The Robsons agreed to install parking lot lighting no later than August 1, 1994. It was agreed that all lighting would be shielded to the satisfaction of the Community Development Department Director no later than August 15, 1994. (Emphasis added).
 - Condition No. 10 – The Robsons agreed that the south and east sides of the new parking lot area on Tract 41 would be screened with earthen berms and landscaped to the satisfaction of the Director no later than July 1, 1994. (Emphasis added).

The June 7, 1994 agreement also acknowledged public use of the Son Silver West “newly established parking lot area on the south side of the property [Tract 41] prior to completion of the Hwy. 179 improvements.”²⁵

- N. On February 22, 1995, John O'Brien, who at the time was an Associate Planner with the City of Sedona, sent a letter to Bill Robson which provided confirmation that all**

²⁴ See Agreement dated June 7, 1994, attached to SSW Memorandum as **Exhibit “12”**.

²⁵ *Id.* at SSW Memorandum **Exhibit “12”**.

required improvements required under the 1992 CUP for the Son Silver West Property had been completed, with the exception of: (1) elimination of the existing mercury vapor lighting [Condition 8], (2) installation of additional parking lot lighting [Condition 9], and (3) construction of the SR 179 improvements [Conditions 4]. Mr. O'Brien requested that the Robsons complete the lighting items as soon as possible and provided notice that the SR 179 improvements would need to be started by April 1, 1995.²⁶

- O. On May 16, 1995, Associate Planner John O'Brien sent a follow-up letter to Bill Robson providing notice that construction of the required SR 179 improvements was required to have been started no later than April 1, 1995 and was to be completed no later than July 1, 1995.** As of May 16, 1995, it did not appear that the Robsons had commenced construction of the SR 179 improvements. Mr. O'Brien stated that the SR 179 improvements were required to be completed by July 1, 1995 or the Robsons would be in violation of the conditions of the June 7, 1994 agreement and the conditions associated with the CUP.²⁷

According to email correspondence between City Planning staff on March 15, 2007, it was noted that the SR 179 improvements required under the CUP included grading and paving to improve drainage and safety. Planner Beth Escobar noted that it appeared that the former SR 179 "requirements were just absorbed into the current ADOT improvement project" which included installation of a median and expansion of SR 179.²⁸ Thus, it appears based upon the correspondence from John O'Brien to the Robsons in 1995 and this March 15, 2007 email that all 12 conditions approved pursuant to the CUP were satisfied.

- P. In or about 1995, the City of Sedona adopted a formal Land Development Code ("LDC") which no longer allowed the expansion of non-conforming uses by obtaining the Planning and Zoning Commission's approval of a conditional use permit.**
- Q. In 1998, Sedona voters ratified the City Council's action adopting an updated Community Plan, removing the Commercial land use designation on the Son Silver West Property and replacing it with a T-14 Transitional land use designation.**

²⁶ See February 22, 1995 letter from Associate Planner John O'Brien to Robsons, attached to SSW Memorandum as **Exhibit "13"**.

²⁷ See May 16, 1995 letter from Associate Planner John O'Brien to Robsons, attached to SSW Memorandum as **Exhibit "14"**.

²⁸ See March 15, 2007 email from Beth Escobar attached to SSW Memorandum as **Exhibit "15"**.

- R. In 2002, Sedona voters ratified the City Council's action adopting an updated Community Plan which removed the Transitional land use designation from the Land Use Plan. The Son Silver West Property was re-designated as Single Family Residential.
- S. On August 23, 2004 and September 4, 2004, Steve O'Brien of ADOT, the Robsons and Sedona Community Development Director John O'Brien reached an agreement whereby a new driveway connecting the Son Silver West parking lot to Highway 179 would be located and paved on Vacant Tract 40 to accommodate a full median break to serve Son Silver West.²⁹ The new driveway and median break would allow circulation of large delivery trucks to the site and would eliminate any backing up of large trucks onto SR 179.
- T. Between 2006 and 2012, Community Development Director John O'Brien exercised his authority to interpret and enforce the LDC and the conditional use permit approved for Son Silver West on a periodic and consistent basis. The exercise of this enforcement authority was apparent in the following correspondence and notices of violation issued by Mr. O'Brien to the Robsons between the years of 2006 through 2012.
1. On January 11, 2006, Director John O'Brien issued a Notice of Violation letter to the Robsons suspending the 1992 CUP due to unlawful addition to a storage building, operation of an information booth for an off-site resort, non-compliant screening, and encroachment of commercial activities and parking on the Arrow Property and Vacant Tract 40.³⁰
 2. On February 24, 2006, Director John O'Brien issued an Amendment to the January 11, 2006 Notice of Violation to the Robsons regarding non-compliant screening along the south property line of Tract 41, demolition work to be performed under demolition permit, the driveway on Vacant Tract 40 being removed and returned to its natural state (despite being agreed upon by ADOT and John in 2004), discontinuing unlawful commercial uses and parking on Vacant Tract 40 and use of the 1,950 s.f. residence.³¹

²⁹ See ADOT Meeting Notes dated August 23, 2004 and Record of Conversation dated September 8, 2004, attached to SSW Memorandum as **Exhibit "16"**.

³⁰ See January 11, 2006 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "17"**.

³¹ See February 24, 2006 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "18"**.

3. On February 28, 2006, a demolition permit was issued by the City to the Robsons to remove an unlawful addition to the southernmost storage building located on Tract 41.³²
4. By March of 2006, the Son Silver West Properties were brought into compliance and the CUP was reinstated.³³
5. On May 2, 2008, Director John O'Brien sent a letter to Rio Robson responding to the Robson's proposal to use Vacant Tract 40 as a temporary staging area for the SR 179 construction project and future plans to develop Vacant Tract 40 as a permanent parking lot for Son Silver West customers. Director O'Brien permitted the use of Vacant Tract 40 as a temporary staging area but prohibited the proposed parking expansion. Director O'Brien provided information on the City's Community Plan update process for purposes of the Robsons applying for a Major Community Plan Amendment and rezoning for Vacant Tract 40.³⁴
6. On May 19, 2011, Director John O'Brien issued a Notice of Violation to Rio Robson regarding the illegal use of Vacant Tract 40 as a parking lot and for outside sales, display and storage of merchandise and equipment associated with the adjacent Son Silver West retail business. The Notice encloses the May 2, 2008 letter in which Mr. O'Brien previously outlined steps that would be necessary to develop the Vacant Tract 40 as permanent parking for Son Silver West (Community Plan Amendment and rezoning). The Notice gave the Robsons until June 24, 2011 to remove all parking on Vacant Tract 40, including all concrete parking stops, and to remove all display items. The Notice states that, should the Robsons fail to remove these items by June 24, 2011, formal code enforcement action would result.³⁵
7. On May 24, 2011, Director John O'Brien issued a follow-up letter to his May 19th Notice of Violation to Rio Robson regarding the requirement to remove illegal paved parking spaces on Vacant Tract 40. Director O'Brien also recommended that the Robsons become involved in the Community Plan Update process for purposes of redesignating the Son

³² See Demolition Permit records, Permit No. B9254-D attached hereto as **Exhibit "H"**.

³³ See Email from Planner Beth Escobar dated March 15, 2007 attached to SSW Memorandum as **Exhibit "15"**.

³⁴ See May 2, 2008 letter from Director O'Brien, attached to SSW Memorandum as **Exhibit "19"**.

³⁵ See May 19, 2011 letter from Director O'Brien, attached to SSW Memorandum as **Exhibit "20"**.

Silver West Property and Vacant Tract 40 for commercial or parking use.³⁶

8. On August 31, 2011, Director John O'Brien issued a Notice of Violation and suspension of the CUP to the Robsons listing violations relating to the following unlawful improvements and/or uses: (1) a coffee shop, a shade structure behind the coffee shop, a roof system attached to a rear yard storage building, a fence along the rear property line, a fence along the front property line, and an open-air roof structure that enclosed a vending machine on the Son Silver West Property, (2) commercial parking and storage on the Vacant Lot 40, and (3) commercial parking and storage on the Arrow Property.³⁷
9. On September 8, 2011, the City of Sedona issued a permit to the Robsons for the existing wrought-iron fence erected within the front yard of the Son Silver West Property abutting Highway 179. The permit/job number assigned to this front fence was B11594. The permit approval form shows a "Zoning Approval Date" of 9/1/2011.³⁸ An email sent by Director O'Brien to staff dated September 8, 2011 confirmed that he approved the issuance of a permit for the wrought-iron fence constructed by the Robsons along SR 179.³⁹
10. On September 12, 2011, Director John O'Brien issued a zoning interpretation to the Robsons finding that Robson would not be allowed to modify CUP 92-3 to introduce new uses, such as a coffee shop, or construct new accessory structures because to do so would be a change of a legal nonconforming use inconsistent with the LDC Article 1204.⁴⁰ The Director advises the Robsons that a Community Plan Amendment and a rezoning to a commercial zoning district would be required in order to operate a coffee shop and construct new accessory structures on the Son Silver West Property.

³⁶ See May 24, 2011 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "21"**.

³⁷ See August 31, 2011 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "22"**.

³⁸ See Permit Approval and Approved Plans for Son Silver West front wrought-iron fence, attached to SSW Memorandum as **Exhibit "23"**.

³⁹ See September 8, 2011 email from Director O'Brien to Brian Pearson attached hereto as **Exhibit "F"**.

⁴⁰ See September 12, 2011 letter from Director O'Brien to the Robsons attached to SSW Memorandum as **Exhibit "24"**.

11. On September 26, 2011, the Robsons appealed the Director's September 12, 2011 interpretation to the Board of Adjustment.⁴¹ Within their appeal, the Robsons challenged the determination by Director O'Brien that the construction of the shade roof and gutter behind the coffee shop was an unlawful structure. The Robsons asserted this structure had been in place for 15 years and was permitted along with the building of a work-repair shop. With regard to the rain gutter system and all-weather clear roofing installed on the west side of the permitted existing building at the southwest corner of Tract 41, the Robsons explained that these improvements were necessary to direct rain water into a gutter system as a precautionary public health and safety measure. The Robsons did not appeal the use of the coffee shop on the Son Silver West Property.
12. On October 4, 2011, Director O'Brien sent an email to Rio Robson notifying Mr. Robson that the Board of Adjustment meeting to hear the Robson's appeal of his decision "to not allow expansion of the Son Silver West Gallery as noted in [the] September 12, 2011 letter" would be held on Friday, December 2, 2011 at 1:00 pm in the Vultee Conference Room at City Hall.⁴² Director O'Brien informed Mr. Robson that he would provide a staff memorandum and an agenda for the Board of Adjustment meeting about 7 to 10 days prior to the hearing. This email supports a finding by the Board of Adjustment that Director O'Brien's subsequent December 21, 2011 decision issued in this Board of Adjustment matter was a decision finding compliance with the existing 1992 CUP and Alternative Site Plan #2.
13. On October 6, 2011, Director John O'Brien sent an email to Rio Robson explaining that an expansion of parking on Vacant Tract 40 and the use of the Arrow Property for office space and employee parking would require a Community Plan amendment and rezoning application.⁴³
14. On November 3, 2011, Rio Robson sent an email to Director O'Brien requesting to "defer" the December 2nd appeal hearing before the Board of Adjustment.⁴⁴

⁴¹ See Robson's appeal narrative to the Board of Adjustment dated September 22, 2011 and City of Sedona Receipt No. 5.015822 dated September 26, 2011 in the amount of \$200 for the Board of Adjustment appeal submitted by the Robsons, attached to SSW Memorandum as **Exhibit "25"**.

⁴² See October 4, 2011 email from Director O'Brien to Rio Robson attached hereto as **Exhibit "G"**.

⁴³ See October 6, 2011 email from Director O'Brien attached to SSW Memorandum as **Exhibit "26"**.

⁴⁴ See November 3, 2011 email from Rio Robson to Director O'Brien attached to SSW Memorandum as **Exhibit "27"**.

15. On November 4, 2011, Director John O'Brian responded to Rio Robsons November 3rd request stating that he would "hold off on the appeal hearing" and that based upon his site inspection on November 2, 2011, it was apparent that the Robsons had discontinued the coffee shop use. He also stated that he had reviewed all permits that the City had on file and could not find a permit for the roof system and shade structure [described in August 31, 2011 notice of violation]. Director O'Brien stated that he would talk with the Chief Building Inspector and would let the Robsons "know if it will be necessary to reschedule . . . [the] appeal hearing with the Board of Adjustment."⁴⁵
16. **On December 21, 2011, Community Development Director John O'Brien emailed Rio Robson providing the following enforcement decision with regard to alleged outstanding violations on the Son Silver West Property and the pending appeal before the Board of Adjustment:**⁴⁶

I have been giving your building permit situation at Son Silver West some thought lately and how we might proceed. Rather than get into some long drawn out enforcement action based on what you might have or might not have constructed at Son Silver West over the years, here is how I would like to proceed:

1. You have already shut down the coffee shop and this was my primary concern. I appreciate you taking care of this issue.
2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building. You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.
3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.

⁴⁵ See November 4, 2011 email from Director O'Brien attached to SSW Memorandum as **Exhibit "27"**.

⁴⁶ See December 21, 2011 decision by Director O'Brien attached to SSW Memorandum as **Exhibit "28"**.

4. By March 1, 2012, I am requesting that you provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

I feel this is a fair compromise to resolve this situation. Please let me know your thoughts.

Thanks.

John O' Brien, Director
Community Development Department

17. **On December 23, 2011, Rio Robson responded by email to Director O'Brien's December 21, 2011 Decision⁴⁷** stating the following:

Dear John,

Sounds like a great plan, I will come by and talk about the site plan after Christmas. Thank you again.

Happy holidays to you and the family.

Rio

- U. **On or about May 9, 2012, Director John O'Brien sent by email to several staff members and provided to future Director Audree Juhlin a memorandum titled "Project Status Information May 2012."⁴⁸** Within the memorandum, Director O'Brien provided updates and information on a number of projects throughout the City of Sedona, including Son Silver West. Notably, Director O'Brien provided no information to staff or Ms. Juhlin regarding any current violations on the Son Silver West Property or current violations relating to the 1992 CUP.

⁴⁷ See December 23, 2011 email from Rio Robson to Director O'Brien attached hereto as **Exhibit "I"**.

⁴⁸ See May 9, 2012 email from Director O'Brien and redacted memorandum titled "Project Status Information May 2012" attached to SSW Memorandum as **Exhibit "29"**.

Instead, Director O'Brien memorialized his prior December 21, 2011 decision by stating:

Rio Robson is supposed to get us a notebook of photographs of the property showing all of the existing improvements. He needs to date these photos and provide them to staff so we know exactly what they have now in place and what is legal non-conforming ... so the next time they building [sic] without permits, we will know what is legal and what is illegal. I have asked for this for several months and Rio has said "he will get to it soon" for at least four months.

- V. **In early summer 2012, Rio Robson submitted to John O'Brien a conceptual site plan and labeled photographs** of the existing uses, structures and parking area on the Son Silver West Property, including the Father Kino Chapel on the Arrow Property.⁴⁹ The photographs submitted by Mr. Robson are labeled and dated March 1, 2012.
- W. **On July 3, 2012, Director John O'Brien retired** after being employed by the City of Sedona for 24 years.
- X. **As a result of and in reliance upon the December 21, 2011 decision by Director John O'Brien finding no use or structural violations of the LDC and 1992 CUP existing on the Son Silver West Property, the Robsons undertook the following actions and substantial investments in their Son Silver West business:**
 - A. The Robsons increased their off-site warehousing and art inventory space from approximately 2,000 s.f. to 8,500 s.f. in order to maintain a constant supply of art objects and goods to the Son Silver West Property for sale. The Robsons are currently in the process of expanding their total warehousing space to approximately 14,000 s.f.
 - B. The Robsons expanded their sources and increased their wholesale purchases of art objects and related inventory items for the Son Silver West Property. The assurance supplied by Director O'Brien's decision that the Son Silver West Property was operating with no violations of the LDC or 1992 CUP caused the Robsons to purchase larger volumes of retail inventory to be stored in the expanded warehouse space and transferred to the Son Silver West Property for sale. For instance, the Robsons purchased approximately \$300,000

⁴⁹ See conceptual site plan and photographs dated March 1, 2012, attached to SSW Memorandum as **Exhibit "30"**.

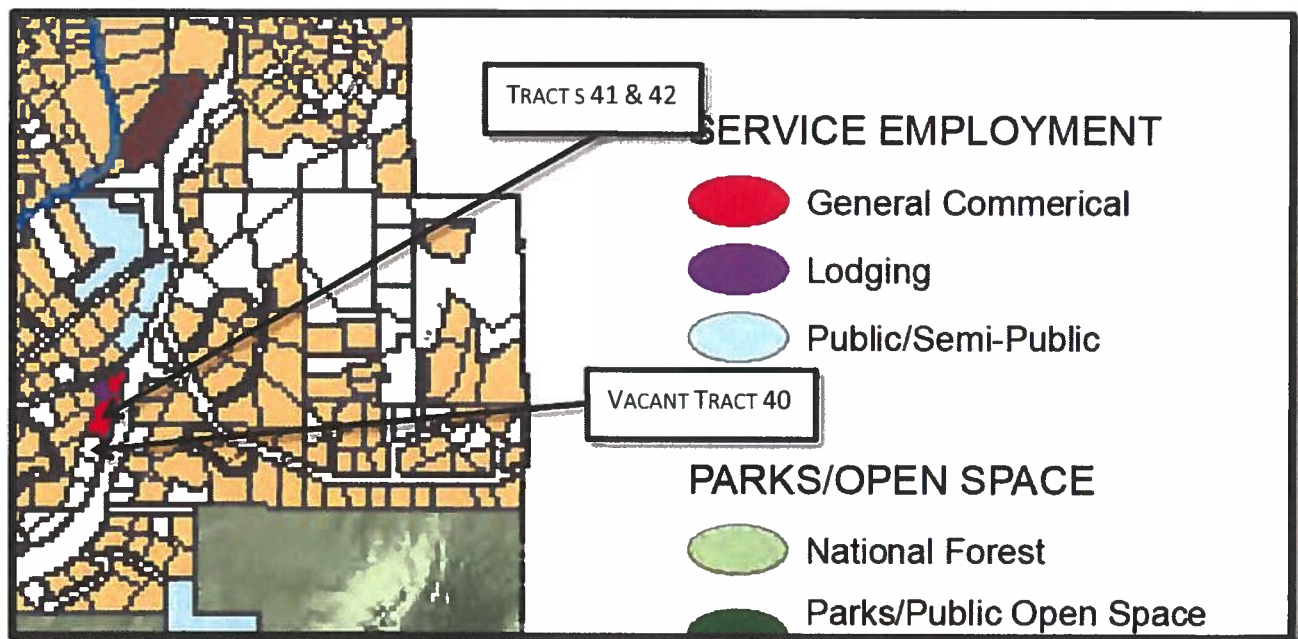
worth of art inventory from Mexico in 2013 and an additional \$500,000 of inventory in 2014.

- C. The Robsons purchased new art manufacturing equipment totaling approximately \$45,000 and spent approximately \$100,000 on computer software and telecommunication equipment for the Son Silver West Property.
- D. As a result of these actions taken by the Robsons in reliance on the December 21, 2011 decision by Director O'Brien, the Robsons realized noticeable increases in annual net revenue starting in 2012 through this year to date.

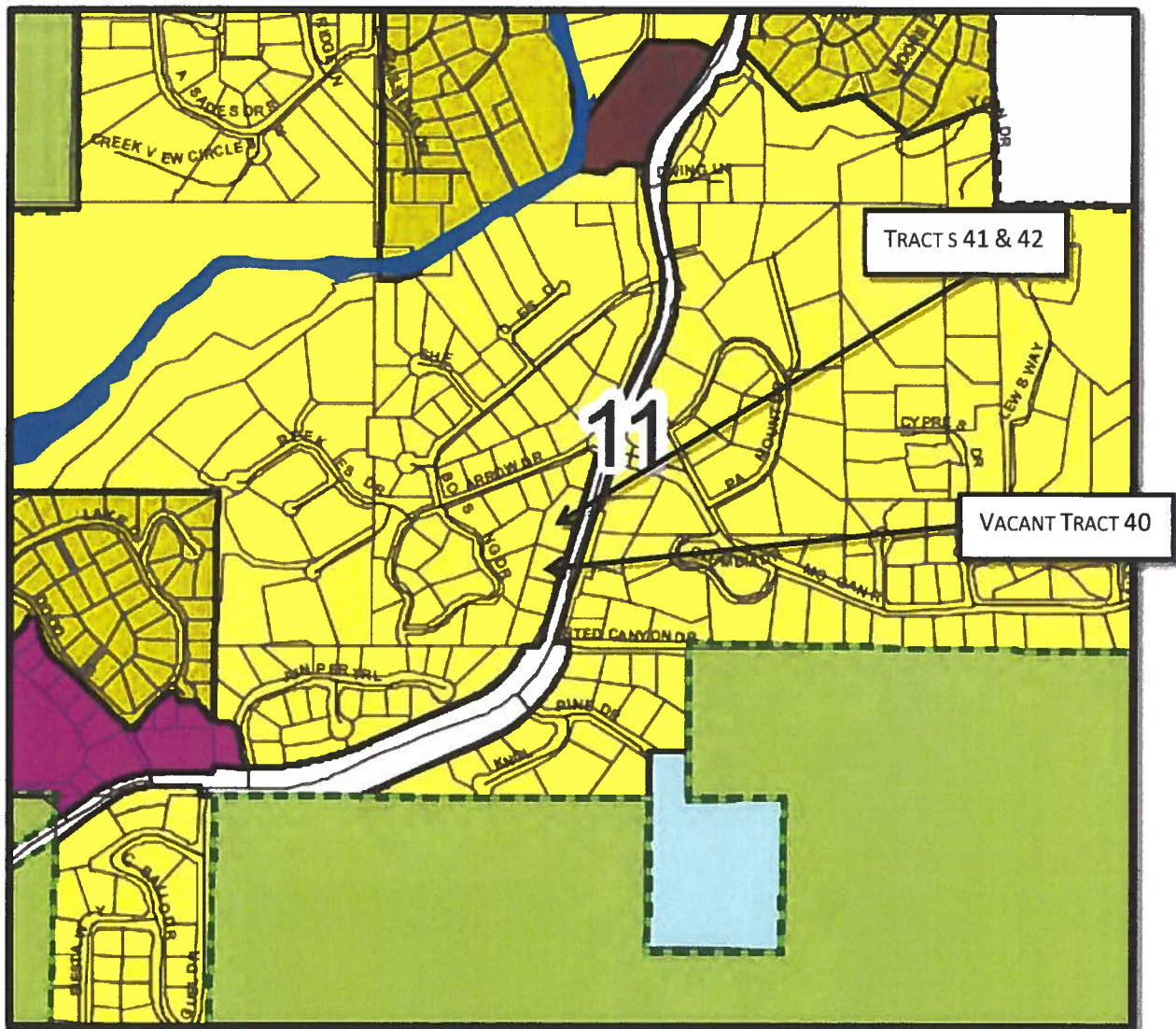
Y. On March 11, 2014, an updated Sedona Community Plan adopted by the City Council was ratified by voters. As suggested by John O'Brien, Rio Robson played an active role in the Community Plan Update process in 2013 and 2014, including the formation of a Community Focus Area (CFA) for the area along SR 179 surrounding the Son Silver West Property.

The current 2014 Community Plan designates the Son Silver West Property (Tracts 42 and 41) as General Commercial (red color) on the Existing Land Use Map. Vacant Tract 40 is designated as Vacant Land (white color).

EXISTING LAND USE MAP RATIFIED BY VOTERS ON MARCH 11, 2014




FUTURE LAND USE MAP RATIFIED BY VOTERS ON MARCH 11, 2014




{ 25 }

page 34 of the Land Use Element, the Morgan Road CFA is a location where the City will develop a Specific Plan, including any necessary rezoning, for adoption by the City Council. The Specific Plans will be developed with participation from property owners, neighbors, and stakeholders and will strive to achieve the “Community Expectations” for each CFA. According to the Land Use Action Plan on page 55 of the Land Use Element, creation and implementation of a Specific Plan for the Morgan Road CFA will occur approximately 6 to 10 years from now.

Community Focus Area 11: Morgan Road




1:5,000
Note: Image is for illustration purposes only - actual boundaries and affected parcels will be determined through the future CFA planning process.

Attributes

- Existing non-conforming commercial uses and church parking area along SR 179 in otherwise residential area.
- One existing parcel with “Office Professional” zoning.
- Residential lots and access affected by the SR 179 widening and roundabout construction.

Community Expectations

- Explore opportunities for non-residential uses along SR 179 if key public or neighborhood amenities are provided (e.g., good pedestrian access to neighborhoods, open space retention, or enhancement next to the highway).
- Consider new non-residential development only if compatible with the character of the neighborhood.

- Z. On October 8, 2014, Director Audree Juhlin issued a Notice of Violation letter to the Robsons for an unlawful expansion of a legal non-conforming use onto three nearby single-family residential properties zoned RS-18b: (1) the Vacant Tract 40, (2) the Arrow Property, and (3) the Bowstring Property. The Notice required the immediate cessation of all commercial activities at these 3

residentially zoned properties and provided an option for the Robsons to apply for approval of a Major Community Plan amendment and rezoning for general commercial uses. The October 8, 2014 Notice did not allege any violations on the Son Silver West Property.⁵⁰ At the time, 33 months had expired since Director O'Brien's December 21, 2011 enforcement ruling.

- AA. On May 28, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a Major Community Plan Amendment application to the City of Sedona** requesting that the Future Land Use Plan be amended to show a Planned Area designation for the Son Silver West Property, Vacant Tract 40 and the Arrow Property.
- BB. On June 26, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a rezoning application to the City of Sedona requesting that the Son Silver West Property, Vacant Tract 40 and the Arrow Property be rezoned from the RS-18b district to the Planned Development district** for purposes of: (1) converting a legal non-conforming use on the Son Silver West Property to a legal conforming use, (2) developing additional parking on the Vacant Tract 40 along SR 179, (3) allowing use of the Arrow Property as offices relating to Son Silver West's business, and (4) allowing a coffee and smoothie bar on the Son Silver West Property.
- CC. On July 24, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a revised Major Community Plan Amendment and rezoning application pertaining to the Son Silver West Property and Vacant Tract 40 only.** The revised Major Community Plan Amendment application requested a change in the land use designation for Tracts 40, 41 and 42 from Single Family Low Density to Planned Area. The revised rezoning application requested that the 2 parcels be rezoned from the RS-18b district to the Planned Area district and requested approval to develop a new parking lot on the Vacant Tract 40.
- DD. On August 12, 2015, Attorney Brian Furuya, on behalf of the Robsons, submitted a request to withdraw the Major Community Plan Amendment and rezoning applications pending under Case No. PZ15-00004.**
- EE. On September 8, 2015, Attorneys Francis J. Slavin and Heather Dukes and the Robsons (Rio Robson in person and Bill and Linda Rose Robson by telephone from Wyoming) met with City of Sedona Community Development Director Audree Juhlin, City Manager Justin Clifton and City Attorney Robert Pickels to discuss an "expanded list" of alleged violations of the 1992 CUP and Sedona Land Development Code applicable to the Son Silver West Property, Vacant**

⁵⁰ See October 8, 2014 letter from Director Audree Juhlin attached to SSW Memorandum as Exhibit "31".

Tract 40, the Arrow Property and the Bowstring Property. Many of the alleged violations discussed during this meeting were items that either were in existence in 1988 or were previously approved by: (1) the Planning Commission pursuant to Case No. CUP 92-3, (2) former Community Development Director Tom Schafer with regard to the 1993 Plan approval and building permits issued thereunder, and (3) former Community Development Director John O'Brien's written interpretation and final enforcement decision dated December 21, 2011. During this meeting, Mr. Slavin offered to provide a legal memorandum to the City of Sedona representatives in attendance at that meeting.

- FF. On September 22, 2015, Attorneys Francis J. Slavin and Heather Dukes submitted the SSW Memorandum to City Attorney Robert Pickels.⁵¹**
- GG. On November 10, 2015, during a meeting at City Hall attended by the Robsons and their counsel, Community Development Director Juhlin served the Robsons with two notices of violation dated November 10, 2015 (the "2015 NOVs")⁵² and a memorandum interpretation of former Director O'Brien's December 21, 2011 Decision (the "Director's 2015 Memorandum").**

III. ISSUES PRESENTED

Son Silver West submits the following issues on appeal to the Board of Adjustment, arising from the interpretations and enforcement decisions of Community Development Department Director Audree Juhlin in the 2015 NOVs and the Director's 2015 Memorandum dated November 10, 2015.

- A. THE DECEMBER 21, 2011 DECISION BY COMMUNITY DEVELOPMENT DIRECTOR O'BRIEN**
 - 1. Whether Former Community Development Director O'Brien had the Legal Authority to Interpret, Enforce, and Determine Compliance with the 1992 CUP, Alternative Site Plan #2, and subsequent site plan and permit approvals issued by the City to Son Silver West?**
 - 2. Whether the December 21, 2011 Decision was an approval issued by the Community Development Director in his official capacity at the City?**

⁵¹ See SSW Memorandum dated September 22, 2015, attached hereto as **Exhibit "A"**.

⁵² See 2015 NOVs and Director's 2015 Memorandum issued by Director Juhlin to Son Silver West and Robsons on November 10, 2015, attached hereto as **Exhibit "C"**.

3. Whether the current buildings, structures and uses on Son Silver West Tracts 41 and 42 are identical to those inspected and approved by Director O'Brien in his December 21, 2011 Decision?
4. Whether the Conceptual Site Plan and Photographs dated March 1, 2012 were submitted by Son Silver West to the Community Development Director in accordance with Director O'Brien's December 21, 2011 Decision?
5. Whether the City of Sedona is estopped from issuing a Notice of Violation to Son Silver West for conditions on Tracts 42 and 41 determined to be in compliance by Director O'Brien in his December 21, 2011 Decision and subsequently recognized as compliant by Community Development Department staff and Directors for almost 4years thereafter?

B. APPEAL OF CODE VIOLATIONS LISTED IN NOVEMBER 10, 2015 NOTICE

1. CORRECTIVE ACTION A.5: Whether a permitted shed located at 61 Arrow Drive may be used as a private religious and contemplative space accessory to a single-family residence?
2. CORRECTION ACTION C.1: Whether the Community Development Director erred in issuing a notice of violation to the owner of 1535 SR 179 for unlawful overflow parking by customers and third parties after owner took necessary steps to post the vacant lot with "No Parking" signs?
3. CORRECTIVE ACTION C.2: Whether the Community Development Director erred in issuing a Notice of Violation to the owner of 1535 SR 179 requiring that the owner cease and desist all use of the vacant lot for commercial purposes when the City of Sedona Community Development Department previously approved the relocation and construction of a commercial driveway on 1535 SR 179 to allow ingress and egress traffic to travel to and from Son Silver West Tracts 42 and 41 and the SR 179?
4. CORRECTIVE ACTION D.1: Whether the existing outdoor retail display areas on Son Silver West Tracts 42 and 41 are permitted as a result of: (1) the legal non-conforming outdoor retail display areas historically located on Tract 42, (2) the 1992 CUP and Alternative Site Plan # 2 approving the expansion of an additional 5,000 square feet of outdoor retail display area on Tract 41, and (3) the 1993 Site Plan Approval which allowed the transfer of some of the 5,000 s.f.

of outdoor retail display approved under the 1992 CUP from Tract 41 to the former parking area along the frontage of Tract 42?

5. **CORRECTIVE ACTION D.2:** Whether the Son Silver West retail space in enclosed buildings is permitted up to approximately 4,328 s.f. as depicted in the survey map prepared by Shephard Wesnitzer, Inc. and approved by the Planning and Zoning Commission as part of the 1992 CUP Condition No. 1 as "Alternative Site Plan #2"?
6. **CORRECTIVE ACTION D.2:** Whether the southernmost building on Tract 41, referred to as "Building A" by Director Juhlin in the 2015 NOV, was approved as a storage shed to be used in connection with the existing Son Silver West commercial operations?
7. **CORRECTIVE ACTION D.2:** Whether the northernmost building on Tract 41, referred to as "Building B" by Director Juhlin in the 2015 NOV, was approved as an art workshop to be used in connection with the existing Son Silver West commercial operations?
8. **CORRECTIVE ACTION D.3:** Whether the single-family residence depicted on Alternative Site Plan #2 as "House" was approved as an administrative office and employee lounge by Director O'Brien's December 21, 2011 Decision?
9. **CORRECTIVE ACTION D.4:** Whether the existing wrought-iron fence lying along the frontage of Tract 42 was approved by Director O'Brien and issued a fence permit in accordance with Condition 6 to the 1992 CUP?
10. **CORRECTIVE ACTION D.5:** Whether the existing light fixtures on Tracts 42 and 41 were approved by Director O'Brien in accordance with Condition 9 to the 1992 CUP?
11. **CORRECTIVE ACTION D.6:** Whether the existing shade structures on Tracts 42 and 41 were approved by the December 21, 2011 Decision by Director O'Brien?
12. **CORRECTIVE ACTION D.6:** Whether the 1992 CUP approval, Conditions of Approval, or Alternative Site Plan #2 limit the square footage of shade structures erected in outdoor retail display areas on the Son Silver West Property?

13. **CORRECTIVE ACTION D.7: Whether the existing 6-foot tall solid wood fence and the 6-foot tall masonry wall lying along the west lot line of Son Silver West Tract 41 and 42 require the issuance of a wall permit under the City of Sedona Building Code?**

C. CHILIES

1. **Whether the preparation, roasting, display and vending of chilies on the Son Silver West Property are permitted as a legal non-conforming use?**

D. BUSINESS LICENSE

1. **Whether revocation of Son Silver West's Business License under Section 5.05.040(A) of the Sedona City Code is a lawful method for enforcing the Sedona Land Development Code?**

E. UNLAWFUL REVOCATION OF 1992 CUP FOR VIOLATIONS ON PROPERTIES SEPARATE AND APART FROM SON SILVER WEST PROPERTY GOVERNED BY 1992 CUP

1. **Whether a conditional use permit approval issued for Son Silver West Tracts 42 and 41 may be revoked as a result of alleged violations of the Sedona Land Development Code on Tracts 40, 45 and 49, when Tracts 40, 45 and 49 were not a part of the conditional use permit approval?**

F. VESTED RIGHTS OF SON SILVER WEST

1. **Whether Director Juhlin erred by making the determination in the 2015 NOV and Director's 2015 Memorandum that documentation submitted by Son Silver West to Director Juhlin in the September 22, 2015 Memorandum and records on file at the City of Sedona do not provide sufficient evidence of prior City approvals which would allow certain existing conditions on the Son Silver West Property?**
2. **Whether the existing uses and structures on the Son Silver West Property, which are being challenged by Director Juhlin as unlawful, are vested as a matter of law?**

IV. JURISDICTION OF BOARD OF ADJUSTMENT

The Sedona Board of Adjustment has jurisdiction to hear this appeal of the Community Development Director Juhlin's erroneous interpretation and enforcement of the City of Sedona Land Development Code, Building Code and the 1992 CUP. The

jurisdiction of the Board of Adjustment to hear appeals of this nature has been established by statute pursuant to the following sections of Ariz. R. Stat. § 9-462.06.

C. **A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator**, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

...

D. **Appeals to the board of adjustment may be taken by persons aggrieved** or by any officer, department, board or bureau of the municipality affected **by a decision of the zoning administrator**, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds of the appeal.

...

G. **A board of adjustment shall:**

1. **Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance** adopted pursuant to this article.

The Sedona Community Development Director performs the duties of the Zoning Administrator pursuant to Ariz. R. Stat. § 9-462.05. See Section 306.B of the Sedona LDC. As the Zoning Administrator, decisions by the Community Development Director regarding an interpretation of the Sedona Land Development Code may be appealed to the Board of Adjustment. See Section 304.01.B of the Sedona LDC. Thus, the interpretations and enforcement decisions made by Director Juhlin, as Zoning Administrator, in the 2015 NOV and the Director's 2015 Memorandum, may be appealed to the Board of Adjustment by Son Silver West and the Robsons as aggrieved persons.

V. STAY OF ALL PROCEEDINGS IN THE MATTER APPEALED FROM

As required by Ariz. R. Stat. § 9-462.06(E), the 30-day time period to comply with the 2015 NOVs as well as the City's related inspections and enforcement proceedings are stayed by Son Silver West's and the Robson's appeal to the Board of Adjustment. Ariz. R. Stat. § 9-462.06(E) states as follows:

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. . . .

In this case, none of the alleged violations would cause imminent peril to life or property. The 2015 NOVs arise from the alleged expansion of commercial uses to residential parcels which were not included within Son Silver West's legal non-conforming use designation and the amount of square footage allowed for certain uses on the Son Silver West property. The City's 2015 NOV citing to the failure of Son Silver West to obtain approvals from the Coconino County Health Department to sell roasted chilies purports to raise a public health, welfare and safety concern in the event it is determined that Health Department approval is necessary. Yet, at the same time, it cannot be proven that this public health, welfare and safety concern rises to the level of imminent peril to life or property inasmuch as the Robsons have been selling roasted chilies for several decades. Thus, all inspections and enforcement proceedings relating to the 2015 NOVs or the Director's 2015 Memorandum are stayed until the Board of Adjustment hears and issues a final decision on this appeal.

VI. ARGUMENT

Son Silver West and the Robsons submit this appeal to the Board of Adjustment, requesting a decision to reverse the erroneous interpretations and decisions of the Community Development Director in the 2015 NOVs and the Director's 2015 Memorandum, for the reasons presented below.

A. THE DECEMBER 21, 2011 DECISION BY COMMUNITY DEVELOPMENT DIRECTOR O'BRIEN

On December 21, 2011, former Director John O'Brien issued a formal decision in his official capacity as Director of the Community Development Department and Zoning Administrator finding the Son Silver West Property (Tracts 42 and 41) to be in compliance with the 1992 CUP. The December 21, 2011 Decision was issued in direct response to a pending, formal appeal before the Sedona Board of Adjustment relating to shade structures on the property. The December 21, 2011 Decision read as follows:

Hi Rose and Rio,

I have been giving your building permit situation at Son Silver West some thought lately and how we might proceed. Rather than get into some long drawn out enforcement action based on what you might have or might not have constructed at Son Silver West over the years, here is how I would like to proceed:

1. You have already shut down the coffee shop and this was my primary concern. I appreciate you taking care of this issue.
2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building.

You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.

3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.

4. By March 1, 2012, I am requesting that you provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

I feel this is a fair compromise to resolve this situation. Please let me know your thoughts.

Thanks.

John O' Brien, Director
Community Development Department

As a result of this Decision, the appeal was never rescheduled to be heard by the Board of Adjustment. The City never

1. **Community Development Director O'Brien had the Legal Authority as Zoning Administrator to Interpret, Enforce, and Determine Compliance with the 1992 CUP, Alternative Site Plan #2, and subsequent site plan and permit approvals issued by the City to Son Silver West.**

In the her 2015 Memorandum, Director Juhlin issued an interpretation of the Community Development Director's powers and authority and made the following decision regarding the authority of former Director O'Brien to issue his December 21, 2011 Decision.

Land use on this site is governed by a regulatory conditional use permit (CUP). Former Director O'Brien had no authority to conditionally approve

changes that directly affect the approved 1992 CUP, through unilateral administrative action. The Land Development Code (LDC), Subsection 402.12 (Conditional Use Permit – Validity and Revisions) states, “Any proposed revisions or changes to an approved conditional use permit application shall be submitted in the same manner and subject to the same approval process as the original review.” **Because Son Silver West has made changes deviating from the 1992 CUP, these changes are subject to review and consideration as prescribed in Section 402 (Conditional Uses). This section of the LDC does not provide for administrative consideration or approvals at a staff level. Therefore, former Director O’Brien did not have the authority to substitute an administrative action for the regulatory requirements prescribed in the LDC relating to modification of a CUP and unilaterally approve changes to the CUP.**

Emphasis added. Director Juhlin again affirmed her interpretation that former Director O’Brien lacked any authority to issue the December 21, 2011 decision by stating that, “based on the regulatory process outlined in the Land Development Code, former Director O’Brien did not have the legal authority to approve any modifications to this CUP.”

While there is no disagreement regarding the required process to modify a CUP under Section 402 of the LDC, Director Juhlin glosses over a key step in the interpretation and enforcement process: Whether Son Silver West is in compliance with the existing CUP? If a Director exercises his enforcement powers as the Zoning Administrator and makes the determination that a property is in compliance with its existing CUP, there is no need to seek the Planning Commission’s approval to modify the CUP.

In this case, Director O’Brien exercised his enforcement authority prescribed by state statute and the Sedona Land Development Code. A Zoning Administrator “is charged with the responsibility for enforcement of the zoning ordinance.” See Ariz. R. Stat. § 9-462.05(C). The Sedona Land Development Code assigns the Zoning Administrator’s duties to the Community Development Department Director. See § 306.B of the Sedona LDC. As part of his enforcement authority, the Director is responsible for notifying a property owner of their failure to comply with certain conditions of approval for a CUP, the reasons for the suspension and the time period by which the property owner must comply with the conditions. See § 402.10.E(1) of the Sedona LDC. For a more detailed analysis of the powers and authority delegated to the Sedona Community Development Director by state statute and prescribed by the Sedona LDC, please see Section III of the September 22, 2015 legal memorandum attached hereto as **Exhibit “A”**.

As part of the pending 2011 enforcement action against Son Silver West arising under the 1992 CUP, former Director O’Brien relied upon his long-time institutional knowledge of the Son Silver West Property and 1992 CUP, conducted a site inspection of the Son Silver West Property with Rio Robson,⁵³ researched the City of Sedona’s site plan

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and permit approval records on file for the Property, and spoke with City staff who would have had knowledge relevant to his determination. Based upon this intimate knowledge of the property and its history, as well as his inspection and research, Director O'Brien determined that the Son Silver West Property was in compliance with the 1992 CUP. Director O'Brien makes no statement regarding a modification or change to the 1992 CUP requirements in his December 21, 2011 decision. Thus, there would have been no requirement for Son Silver West to modify its CUP through the typical Planning Commission amendment process set forth in Section 402 of the LDC.

By making the recent interpretation that Son Silver West is not in compliance with the 1992 CUP, Director Juhlin has merely made a decision that differs from the decision of Former Director O'Brien. A different interpretation by Director Juhlin does not have the legal effect of overruling former Director O'Brien's December 21, 2011 Decision .

In a nutshell, the City has taken the position that former Director O'Brien committed an ultra vires act simply because the new Community Development Director does not agree with Mr. O'Brien's December 21, 2011 Decision. An ultra vires act is one that is "unauthorized" or "beyond the scope of power allowed or granted by a corporate charter or by law." Black's Law Dictionary (10th ed. 2014). With regard to a municipality, the exercise of zoning power must be founded on the state legislature's delegation to local governmental units, and "in the absence of such a grant, such exercise is ultra vires and void." *Bella Vista Ranches, Inc. v. City of Sierra Vista*, 126 Ariz. 142, 144, 613 P.2d 302, 304 (App.1980). "The doctrine of ultra vires, when invoked, should not be allowed where it would not advance justice, but, on the contrary, would accomplish a legal wrong." *Higgins v. Arizona Sav and Loan Ass'n*, 85 Ariz. 6, 10, 330 P.2d 504, 507 (1958) (citing *Leon v. Citizen's Building & Loan Ass'n*, 14 Ariz. 294, 127 P. 721, 722 (1912)). Furthermore, public officials are "presumed to have done their duty" and their acts "are presumed to be correct and legal in absence of clear and convincing evidence to the contrary." Emphasis added. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 193, 181 P.3d 219, 240 (App.2008) (citing *Verdugo v. Indus. Comm'n*, 108 Ariz. 44, 48, 492 P.2d 705, 709 (1972)).

In *Bella Vista Ranches, Inc. v. City of Sierra Vista*, 126 Ariz. at 143, 613 P.2d at 303, the Arizona Court of Appeals determined that Sierra Vista had no authority to regulate subdivisions prior to the passage of Ariz. R. Stat. §§ 9-463 and 9-463.04. An owner of real property in Sierra Vista challenged the City's enforcement of its subdivision regulations which were adopted in 1966 – prior to the state legislature's passage of the first subdivision enabling statutes, Ariz. R. Stat. 9-463 and 9-463.04, in 1974. *Id.* The Court of Appeals found that, because the legislature had delegated no comprehensive regulatory authority to cities and towns over subdividing at the time Sierra Vista adopted its subdivision regulations, Sierra Vista's exercise of the zoning power to require approval of subdivision plats was ultra vires and void. *Id.* at 143-144, 613 P.2d at 303-304.

Contrary to Sierra Vista's attempt to regulate subdivisions within its territorial limits without being delegated this statutory authority in *Bella Vista Ranches, Inc. v. City of Sierra Vista*, Director O'Brien's December 21, 2011 enforcement ruling was an authorized enforcement act under Ariz. R. Stat. § 9-462.05 and Section 306 of the Sedona LDC. Ariz. R. Stat. § 9-462.05 charges the zoning administrator with the responsibility of enforcing the zoning ordinance - a responsibility that is delegated to the Community Development Director under the Sedona LDC. The City of Sedona may not limit or qualify such authorization in an attempt to vacate an enforcement decision by the Director. As shown below in Section IV.A.2 of this narrative, the December 21, 2011 decision was the culmination of the Director's prior interpretation and enforcement decisions issued to the Robsons starting in 2006 through 2011, and was a final decision obviating the need to reschedule a Board of Adjustment hearing for purposes of deciding the Robson's pending appeal of the Director's September 12, 2011 interpretation. In addition, the fact that O'Brien intended that his decision serve as a baseline for future review of potential expanded uses and structures on the Son Silver West Property also supports a finding that the decision was authorized, final and enforceable.

Director John O'Brien's December 21, 2011 decision was not appealed by an aggrieved person to the Board of Adjustment within 15 days, as required by Sedona LDC § 404.10(A). Therefore, in the event an aggrieved person were to attempt to challenge Director O'Brien's decision in Superior Court in the future, the Superior Court would lack jurisdiction to hear and decide the appeal due to the person's failure to exhaust administrative remedies.

Furthermore, the City's failure to take any action to challenge Director O'Brien's decision for almost 4 years from December 21, 2011 until September 2015 is persuasive that the City both recognized and ratified Director O'Brien's decision as being an authorized and final decision. When current Director Juhlin issued a notice of violation to the Robsons on October 8, 2014, the notice alleged no violations pertaining to the use or existing structures on the Son Silver West Property which is consistent with Director O'Brien's December 21, 2011 decision.⁵⁴ Instead, the October 8, 2014 notice alleged violations on Vacant Tract 40, the Arrow Property and the Bowstring Property. It was not until after the Robsons withdrew their Major Community Plan and rezoning applications that the City began revisiting violations that had been resolved by Director O'Brien's prior enforcement decision. Thus, it appears that, in the 45 months preceding our September 8, 2015 meeting, the City was continuing to uphold and enforce the December 21, 2011 decision by Director O'Brien as an authorized act of the Sedona Community Development Director. To disregard that enforcement decision upon which the Robsons have relied for 45 months as *ultra vires*, or unauthorized, "would not advance justice, but, on the contrary, would accomplish a legal wrong." See *Higgins*, *supra*. Moreover, the City of Sedona cannot provide clear and convincing evidence that would overcome the presumption that John O'Brien performed his enforcement duties as the Director of Community

⁵⁴ See Notice of Violation dated October 8, 2014 attached hereto as **Exhibit "31"**.

Development when issuing his December 21, 2011 decision and that such decision was correct and legal.

Therefore, we petition the Board of Adjustment to reverse Director Juhlin's interpretation and decision and find that Director O'Brien had authority to issue the December 21, 2011 Decision determining the Son Silver West Property to be in compliance with the 1992 CUP.

2. The December 21, 2011 Decision was issued by the Community Development Director acting in his official capacity as Zoning Administrator.

In the her 2015 Memorandum, Director Juhlin provides the following decision finding that the December 21, 2011 Decision by former Director John O'Brien was not a "formal approval."

The City's position is that Director O'Brien never gave any formal approval; and regardless, would not have had the authority to do so.

This decision is again restated by Director Juhlin in the 2015 NOV:

While we are aware of certain limited communications discussing the site conditions, staff's records reflect that no formal approval in conformance with the Sedona Land Development Code or Sedona City Code has been granted. Staff believes that while the documentation submitted by your legal counsel provides a detailed overview of the history of the property, the information presented does not offer satisfactory proof that any formal approvals exist allowing the expansion of the site beyond what was approved in the 1992 CUP.

Son Silver West appeals this decision of Director Juhlin. There is no requirement or standard set forth in the Sedona Land Development Code or the 1992 CUP which requires a decision of the Zoning Administrator to be in a certain form or substance in order to be effective. The December 21, 2011 Decision was a written approval issued to the Robsons with John O'Brien's electronic signature and his official capacity as Director of the Community Development Department added after his name.

We would also point to the history of communications between John O'Brien and the Robsons as evidence which would support a finding that Director O'Brien's December 21, 2011 Decision was an official approval determining Son Silver West to be in compliance with the 1992 CUP. Beginning in approximately 1995 through his retirement in July 2012, John O'Brien, first as an Associate Planner and later as the Community Development Director, consistently and periodically exercised his power to enforce the provisions of the Sedona LDC and the 1992 CUP issued to the Son Silver West Property.

As described in greater detail in the Statement of Facts set forth in the September 22, 2015 memorandum attached hereto as **Exhibit "A"**, Mr. O'Brien took several actions with regard to Son Silver West leading up to his December 21, 2011 decision.

As an Associate Planner at the City, in 1995, Mr. O'Brien sent letters to the Robsons enforcing both the conditions of approval for CUP 92-3 and the requisite time periods for completion of those conditions.⁵⁵

Then, on January 11, 2006 and February 24, 2006, Mr. O'Brien, as the Director of the Community Development Department, issued to the Robsons a notice of violation and an amended notice of violation, respectively.⁵⁶ Within these notices, Director O'Brien provided notice to the Robsons that their CUP was suspended until the listed violations were either corrected or discontinued. By March of 2006, the Son Silver West Properties were brought into compliance and the CUP was reinstated.⁵⁷

On May 2, 2008, Director O'Brien sent a letter to Rio Robson interpreting the Sedona LDC to allow the temporary use of Vacant Tract 40 as a staging area for the SR 179 construction project. In response to the Robson's inquiry regarding development of Vacant Tract 40 as a permanent parking lot for Son Silver West customers, Director O'Brien enforced the LDC prohibiting such use unless the Robsons applied for and obtained City Council approval of a Community Plan amendment and rezoning for Vacant Tract 40.⁵⁸

Approximately 3 years later, on May 19 and May 24, 2011, Director O'Brien exercised his enforcement authority by issuing a notice of violation and follow-up letter to Rio Robson requiring removal of all parking and outdoor display and storage uses being conducted on Vacant Lot 40 in violation of the LDC.⁵⁹ These May 2011 letters were followed by a subsequent notice of violation and suspension of the CUP dated August 31, 2011. The August 31, 2011 notice was issued by Director O'Brien for an unlawful coffee shop use and the alleged unlawful erection of: (1) a shade structure behind the coffee shop, (2) a roof system attached to a rear yard storage building, (3) an open-air roof system enclosing a vending machine, and (4) a fence along the front property line of the Son

⁵⁵ See Letter from John O'Brien to Robsons dated February 22, 1995 attached hereto as **Exhibit "13"** ; See also Letter from John O'Brien to Robsons dated May 16, 1995 attached hereto as **Exhibit "14"**.

⁵⁶ See Letters from John O'Brien to Robsons dated January 11, 2006 and February 24, 2006 attached hereto as **Exhibits 17" and "18"**, respectively.

⁵⁷ See Email from Planner Beth Escobar to City staff dated March 15, 2007 attached hereto as **Exhibit "15"**.

⁵⁸ See Letter from John O'Brien to Rio Robson dated May 2, 2008 attached hereto as **Exhibit "19"**.

⁵⁹ See Letters from Director O'Brien dated May 19, 2011 and May 24, 2011 attached hereto as **Exhibit "20" and "21"** respectively.

Silver West Property. The August 31, 2011 notice also cited parking and storage violations on Vacant Tract 40 and the Arrow Property.⁶⁰

On September 12, 2011, Director O'Brien issued to the Robsons an official interpretation of the LDC finding that the Robson's would not be allowed to modify their CUP to introduce new uses, such as a coffee shop, or to construct new accessory structures on the Son Silver West Property because to do so would constitute a change to a legal non-conforming use inconsistent with LDC Article 1204. Director O'Brien advised the Robsons to apply for City Council approval of a Community Plan amendment and rezoning in order to operate a coffee shop or erect new structures on the Son Silver West Property.⁶¹ On September 26, 2011, this interpretation was appealed by the Robsons to the Board of Adjustment challenging the Director's decision that new structures had been erected.⁶²

On October 6, 2011, Director O'Brien sent a separate interpretation letter to the Robsons finding that an expansion of parking on Vacant Tract 40 and the use of the Arrow Property for office space and employee parking would require a Community Plan amendment and rezoning application.⁶³

On November 3, 2011, Rio Robson emailed a request to John O'Brien to defer the Board of Adjustment hearing.⁶⁴ After receiving the Robson's November 3, 2011 email request, Director O'Brien sent an email response on November 4, 2011 stating that he would "hold off on the appeal hearing" and would notify the Robsons, after meeting with Sedona's Chief Building Inspector, whether it would be necessary to reschedule the appeal hearing before the Board. Director O'Brien also confirmed that he made a site inspection of the Son Silver West Property on November 2, 2011 and verified that the coffee shop use had been discontinued.⁶⁵

On December 21, 2011, Director O'Brien sent an email to Rio Robson providing his final decision regarding the enforcement proceedings that had commenced on August 31, 2011 as well as the September 12, 2011 formal interpretation that was appealed by the Robsons to the Board of Adjustment.⁶⁶ In his decision, Director O'Brien acknowledged the discontinuance of the coffee shop use. He also expressed his inability

⁶⁰ See Letter from Director O'Brien dated August 31, 2011 attached hereto as **Exhibit "22"**.

⁶¹ See Letter from Director O'Brien dated September 12, 2011 attached hereto as **Exhibit "24"**.

⁶² See September 26, 2011 appeal from Robsons to Board of Adjustment attached hereto as **Exhibit "25"**.

⁶³ See email from Director O'Brien dated October 6, 2011 attached hereto as **Exhibit "26"**.

⁶⁴ See email from Rio Robson to Director O'Brien dated November 3, 2011 attached hereto as **Exhibit "27"**.

⁶⁵ See email from Director O'Brien dated November 4, 2011 attached hereto as **Exhibit "27"**.

⁶⁶ See Director O'Brien's December 21, 2011 decision attached hereto as **Exhibit "28"**.

to locate City or County building permits or approvals for the shade structure and roof system which the Robsons claimed were replacements of similar structures. Due to the lack of documentation and the possibility that these structures could have been constructed before Sedona's incorporation in 1988, Director O'Brien made the decision to allow the structures to remain as constructed. In requiring the Robsons to submit a site plan and photographs of the Son Silver West Property showing existing buildings, their use and parking, Director O'Brien made the following enforcement decision:

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

When analyzing the language used by Director O'Brien in his December 21, 2011 enforcement ruling in the context of the preceding history of enforcement decisions as well as the Robson's appeal pending before the Board of Adjustment, it is clear that Director O'Brien's decision was an authorized act of enforcement by Sedona's Zoning Administrator under Ariz. R. Stat. § 9-462.05 and Section 306 of the Sedona LDC and that he intended his decision to be a formal and final decision by which the City and the Robsons could rely upon in the future.

Prior to retiring, in May of 2012, Director O'Brien sent an email to several staff members and provided to future Director Audree Juhlin a memorandum titled "Project Status Information May 2012."⁶⁷ Within the memorandum, Director O'Brien provided an update and information regarding Son Silver West. Notably, Director O'Brien provided no information to staff or Ms. Juhlin regarding any current violations on the Son Silver West Property or current violations relating to the 1992 CUP. Instead, Director O'Brien memorialized his prior December 21, 2011 decision by stating:

Rio Robson is supposed to get us a notebook of photographs of the property showing all of the existing improvements. He needs to date these photos and provide them to staff so we know exactly what they have now in place and what is legal non-conforming ... so the next time they building [sic] without permits, we will know what is legal and what is illegal. I have asked for this for several months and Rio has said "he will get to it soon" for at least four months.

It is important to note that, after the Robsons submitted a conceptual site plan and photographs of the Son Silver West Property to Director O'Brien, no Board of Adjustment hearing was scheduled by the City of Sedona. Since there was no evidence available to

⁶⁷ See May 9, 2012 email from Director O'Brien and redacted memorandum titled "Project Status Information May 2012" attached hereto as **Exhibit "29"**.

Director O'Brien to present to the Board of Adjustment with regard to the alleged new structures, Mr. O'Brien never rescheduled the Board of Adjustment hearing.

The history of communications between Director O'Brien and the Robsons, the fact that his December 21, 2011 Decision was an authorized act of the Community Development Director under state statute and the Sedona LDC, and the written format of his decision which included his signature and title as Community Development Director, all support a decision by the Board of Adjustment to reverse the determination of Director Juhlin requiring some type of "formal approval" in order for the December 21, 2011 Decision to become effective.

3. The current buildings, structures and uses on Son Silver West Tracts 41 and 42 are identical to those inspected and approved by Director O'Brien in his December 21, 2011 Decision.

In her 2015 Memorandum, Director Juhlin determined that the materials submitted by Son Silver West's legal counsel as part of the SSW Memorandum "fail to substantiate that conditions outlined in the attached Notice of Violation were in fact present prior to 2011 and not created afterward."⁶⁸ In response to this decision, Son Silver West will be submitting the following supplemental documentation to the Community Development Director and the City of Sedona Board of Adjustment for their consideration: (1) historical aerial photographs of the Son Silver West Property obtained from the City of Sedona GIS Department⁶⁹, (2) an accurate site plan of the existing structures and uses on the Son Silver West property, and (3) sworn statements from Rio Robson and Linda Rose Robson confirming that the buildings, structures and uses on the Son Silver West Property which existed at the time of issuance of the 2015 NOVs were the same buildings, structures and uses that were approved by Director O'Brien in his December 21, 2011 Decision. These supplemental materials will be submitted at least 10 calendar days prior to the Board of Adjustment hearing scheduled for this matter. In the meantime, we submit the following aerial photograph comparisons of: (1) a current Google Earth aerial photograph dated April 2, 2015 and (2) a Google Earth aerial photo dated June 20, 2011. We would request a determination by the Board of Adjustment finding that the current conditions existing on the Son Silver West Property are the same or substantially similar conditions approved by Director O'Brien as being in compliance with the Sedona LDC and 1992 CUP in the December 21, 2011 Decision.

⁶⁸ See Director's 2015 Memorandum attached hereto as **Exhibit "C"**.

⁶⁹ Sedona GIS Analyst, Lisa Leurs, is out of the office until December 2, 2015. At that time, a request for historical aerial photographs will be made with the Sedona GIS Department.

4. The Conceptual Site Plan and Photographs dated March 1, 2012 were submitted by Son Silver West to the Community Development Director in accordance with Director O'Brien's December 21, 2011 Decision.

Within her 2015 Memorandum⁷⁰, Director Juhlin provides the following interpretation of the conceptual site plan and photographs that were submitted by Rio Robson to the City in response to Director O'Brien's December 21, 2011 Decision:

When reviewing the email exchange, it is clear that a March 1, 2012 deadline was established for the Robsons to supply the requested information. It is also clear based on a May 8, 2012 email from former Director O'Brien to staff that he had not received the requested documentation from the Robsons. As of today's date, staff has been unsuccessful in locating any such documentation that John O'Brien, or any other staff may have received in response to the 2011 email request.

...

After thorough review, staff has determined that the documentation supplied by the Robsons in the summer of 2015, is insufficient, does not satisfy the 2011 email request and fails to substantiate that conditions subject to the attached Notice of Violation were present in 2011. The map submitted is not considered an adequate site plan, but rather a more informal marketing map used for customers to navigate the site. The map does not accurately portray what is on site and the photos are not adequately keyed to the map. The buildings are not correctly represented in size, shape, orientation and location, and it does not sufficiently depict property lines. For instance, the Chapel is shown on the 1476 SR 179 property, when in fact it is located on the 61 Arrow Drive property. Additionally, the map does not depict shade structures or outdoor display areas. Since the original impetus for former Director O'Brien's request was a question regarding the legality of the shade structures, the logical result would have been a site plan that showed the shade structures.

...

Further, staff was unable to satisfactorily evaluate the pictures submitted as they are black and white and the exterior photos are of poor quality; many are washed out by sunlight or include significant shadows and do not provide staff with a clear understanding of the size, scope, location and nature of the conditions at that time the photos were taken. None of the buildings have photos of all of the exteriors and large portions of the site seem to have been excluded, based on the best guess of photo locations by staff as shown on the map.

⁷⁰ *Id.*

In the 2015 Memorandum, Director Juhlin also raises an objection to the site plan and photographs submitted by the Robsons because “they were never confirmed as . . . [complete] by Director O’ Brien.”

Son Silver West’s and the Robson’s appeal on this matter are three-fold: (1) Director O’Brien’s December 21, 2011 Decision provided a minimalistic description of the site plan and photographs that were being requested of the Robsons, (2) Director O’Brien made no mention of a requirement that he review and approve the site plan and photographs submitted by the Robsons in order for his December 21, 2011 Decision to be valid, and (3) the conceptual site plan and photographs were submitted by Rio Robson to Director O’Brien at the City of Sedona in early summer 2012, which is contrary to Director Juhlin’s statement that the documentation was not supplied by the Robsons until the summer of 2015.

Director O’Brien stated the following in his December 21, 2012 Decision with regard to the site plan and photographs to be submitted by the Robsons:

3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.

4. By March 1, 2012, I am requesting that your provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

The Robsons submitted a site plan and photographs that they believed, at the time, would satisfy Director O’Brien’s request. In all fairness, there is no statement by Director O’Brien conditioning his December 21, 2011 Decision on his approval of the site plan and photographs submitted. Instead, it appears from his prior email correspondence, that Director O’Brien based his Decision on a prior inspection of the Son Silver West Property performed on November 2, 2011,⁷¹ his research of the City’s records, and his communications with staff.

The request for the site plan and photographs was a follow-up item that would have been used as baseline documentation by both the City and the Robsons moving forward. In response to the inadequacies of the site plan and photographs first raised at the September 9, 2015 meeting with City Attorney Pickels, City Manager Clifton and Director Juhlin, the Robsons offered to submit an engineered site plan and photographs to the City in the SSW Memorandum:⁷²

⁷¹ See Email from Director O’Brien to Rio Robson dated November 4, 2011 attached to SSW Memorandum as **Exhibit “27.”**

⁷² See SSW Memorandum, page 38, attached hereto as **Exhibit “A”**.

[W]e are willing to submit an engineered site plan with dimensions and professional photographs keyed to the site plan for the Son Silver West Property. The uses and structures existing on the Son Silver West Property today were in existence at the time of Director O'Brien's December 21, 2011 decision. There have been no modifications to the Son Silver West Property in that 4-year period. The engineered site plan and photographs will supply the City with confidence when responding to any future allegations or inquiries regarding the uses being conducted on the Son Silver West Property.

This offer to provide an engineered site plan and photographs keyed to the site plan is still extended by the Robsons to the Community Development Director. All-in-all, Director O'Brien's request for a site plan and photographs was well-founded given: (1) the lengthy history of this property as a legal non-conforming use since 1964, (2) the conflicting uses and square footages between those set forth in the 1992 Staff Report and those depicted on the Alternative Site Plan #2, (3) the piecemeal site plan and permit approvals issued by the City after the 1992 CUP approval, and (4) the previous inability of City staff to locate City permit approvals and plans for the Son Silver West Property that the Robsons were able to later produce from their personal records. This site plan and photographs would greatly mitigate future ambiguities and disagreements which might arise regarding the legal non-conforming use rights enjoyed by Son Silver West. We would request that the Board of Adjustment issue a determination finding that, based upon the historical records, sworn statements and the aerial photographs submitted as part of this appeal, the submittal of an engineered site plan of the existing conditions on the Son Silver West Property and professional photographs keyed to the site plan would satisfy the request by former Director O'Brien in his December 21, 2011 Decision for documentation which would establish the legal non-conforming uses, buildings and structures that were permitted on the Son Silver West Property at the time of his Decision.

5. **The City of Sedona is estopped from issuing a Notice of Violation to Son Silver West for conditions on Tracts 42 and 41 determined to be in compliance by Director O'Brien in his December 21, 2011 Decision and subsequently recognized as compliant by Community Development Department staff and Directors for nearly 4 years thereafter.**

In Arizona, the elements of equitable estoppel are: "(1) the party to be estopped commits acts inconsistent with a position it later adopts; (2) reliance by the other party; and (3) injury to the latter resulting from the former's repudiation of its prior conduct." *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, ¶ 35, 959 P.2d 1256, ¶ 35 (1998). In *Freightways, Inc. v. Arizona Corp. Comm'n*, 129 Ariz. 245, 248, 630 P.2d 541, 544 (1981), the Arizona Supreme Court disapproved of the rule prohibiting the application of principles of equitable estoppel against a sovereign, stating that estoppel will be applied against a sovereign, even a sovereign exercising its governmental functions, when justice

dictates (quoting *Silver City Consol. Sch. Dist. No. 1 v. Bd. of Regents*, 75 N.M. 106, 401 P.2d 95, 99 (1965)) (“We recognize that estoppel in its usual sense is not generally applicable against a sovereign in the exercise of governmental functions, but where right and justice demand it, the doctrine will be applied.”). The government may be estopped only when its “wrongful conduct threatens to work a serious injustice and ... the public interest would not be unduly damaged.” *Valencia Energy Co.* at ¶ 33, 959 P.2d at ¶ 33, quoting *Freightways*, 129 Ariz. at 248, 630 P.2d at 544. In order to find that the public interest would be unduly damaged, the Arizona Supreme Court in *Freightways* stated “that where the application of estoppel will not affect the exercise by the state of its governmental powers and sovereignty, or bind it by unauthorized acts of its officers and employees, estoppel will, when justice dictates, be applied to the state.” *Freightways*, 129 Ariz. at 248, 630 P.2d at 544.

a. The City’s recent alleged violations pertaining to the Son Silver West Property are inconsistent with Director O’Brien’s December 21, 2011 Decision and the actions of the City.

Director O’Brien’s December 21, 2011 decision arose out of his interpretation and enforcement of the Sedona LDC and 1992 CUP with regard to allowable uses and structures on the Son Silver West Property. As the City’s Zoning Administrator and Community Development Department head, Director O’Brien was charged with the statutory authority and responsibility to enforce the City of Sedona LDC and the 1992 CUP. As part of this decision, Director O’Brien identified no outstanding violations of the Sedona LDC and 1992 CUP and requested that Rio Robson submit a site plan and photographs of the existing uses and structures on the Son Silver West Property. Director O’Brien explained the following purpose for the requirement that Rio Robson submit the site plan and photographs to the City:

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won’t be question with what is allowed and what is not allowed.

Following the December 21, 2011 decision, Director O’Brien sent an email and memorandum on May 9, 2012 to fellow staff and future Director Audree Juhlin notifying them of his decision to use the photos submitted by Rio Robson to establish the permitted legal non-conforming uses and structures as a baseline for the future. The City of Sedona later accepted the conceptual site plan and March 1, 2012 photographs submitted by Rio Robson and never rescheduled the pending Board of Adjustment hearing. When Director Audree Juhlin issued a notice of violation to the Robsons on October 8, 2014, she did not assert any violations pertaining to the uses or structures on the Son Silver West Property. Instead, her October 8, 2014 notice addressed violations on the Vacant Tract 40, the Arrow Property and the Bowstring Property only. It was not until our September 8, 2015 meeting, almost 4 years after Director O’Brien’s December 21, 2011 decision, that the City of

Sedona for the first time elected to raise alleged violations on the Son Silver West Property which were previously addressed and resolved by Director O'Brien's enforcement decision finding no violations. The 2015 NOV's and the Director's 2015 Memorandum issued by Director Juhlin contain decisions and interpretations regarding the Son Silver West legal non-conforming uses and structures and the 1992 CUP approval which are contrary to Director O'Brien's December 21, 2011 decision.

b. The Robsons relied on Director O'Brien's December 21, 2011 Decision.

In reliance on the December 21, 2011 decision by Director John O'Brien finding no use or structural violations of the LDC and 1992 CUP, the Robsons undertook significant actions and substantial investments with regard to their Son Silver West business.

The Robsons increased their off-site warehousing and art inventory space from approximately 2,000 s.f. to 8,500 s.f. in order to maintain a constant supply of art objects and goods to the Son Silver West Property for sale. The Robsons are currently in the process of expanding their total warehousing space to approximately 14,000 s.f.

The Robsons expanded their sources and increased their wholesale purchases of art objects and related inventory items for the Son Silver West Property. The assurance supplied by Director O'Brien's decision that the Son Silver West Property was operating with no violations of the LDC or 1992 CUP caused the Robsons to purchase larger volumes of retail inventory to be stored in the expanded warehouse space and transferred to the Son Silver West Property for sale. For instance, the Robsons purchased approximately \$300,000 worth of art inventory from Mexico in 2013 and an additional \$500,000 of inventory in 2014.

The Robsons purchased new art manufacturing equipment totaling approximately \$45,000 and spent approximately \$100,000 updating computer software and telecommunication equipment for the Son Silver West Property.

As a result of these actions taken by the Robsons in reliance on the December 21, 2011 decision by Director O'Brien, the Robsons realized noticeable increases in annual net revenue starting in 2012 through this year to date.

c. The Robsons would be substantially damaged as a result of the City's repudiation of Director O'Brien's December 21, 2011 Decision.

By upholding the 2015 NOV's, the Robsons would suffer substantial injuries as a result of the City's repudiation of Director O'Brien's December 21, 2011 decision. Some of the violations which would cause damage to the Robsons and their business include: (1)

limiting the total outdoor retail display area on Tracts 41 and 42 to 5,000 s.f., (2) requiring 1,950 s.f. within the original home/gallery structure to be used as a single family residence, and (3) removing any enclosed commercial retail areas which exceed 2,250 s.f. Requiring compliance with these alleged violations would severely injure the Robson's Son Silver West business and financial commitments they have made in reasonable reliance on Director O'Brien's decision.

- d. The City's wrongful conduct threatens to work a serious injustice to the Robsons and the public interest would not be unduly damaged by the application of estoppel against the City.**

Balancing the equities, the interest of the public would not be damaged by upholding the validity of Director O'Brien's December 21, 2011 decision, and there is no threat to the sovereignty of the City in upholding the validity of that decision as issued inasmuch as it has been honored by the City for nearly 4 years. Due to the unique legal non-conforming use at issue in this case, preventing the City from bringing a CUP revocation or suspension action would not affect the exercise by the City of its general governmental powers to apply its LDC city-wide. The Sedona LDC no longer allows the expansion of a legal non-conforming use through the administrative approval of a CUP. Thus, the 1992 CUP that was being enforced by Director O'Brien is truly unique. On the other hand, the damage that would be done to the Robsons, who relied upon the Director's decision in the operation of its Son Silver West business since 2011, would be of great magnitude. The Robsons and Son Silver West request a determination by the Board of Adjustment that the City of Sedona and Director Juhlin are equitably estopped from issuing the following violations which are inconsistent with the December 21, 2011 Decision: (1) limiting the total outdoor retail display area on Tracts 41 and 42 to 5,000 s.f., (2) requiring 1,950 s.f. within the original home/gallery structure to be used as a single family residence, (3) removing any enclosed commercial retail areas which exceed 2,250 s.f.

B. APPEAL OF CODE VIOLATIONS LISTED IN NOVEMBER 10, 2015 NOTICE

- 1. APPEAL OF CORRECTIVE ACTION A.5: The permitted shed located at 61 Arrow Drive may be used as a private religious and contemplative space accessory to a single-family residence.**

As the property owner of 61 Arrow Drive, Rio Robson appeals to the Board of Adjustment Director Juhlin's decision in the 2015 NOV requiring the religious accessory structure referred to as the "Chapel" to be reverted to a shed. While Mr. Robson understands that the property at 61 Arrow Drive is zoned RS-18b Single-Family Residential and that commercial retail uses associated with Son Silver West cannot be conducted in the Chapel building, Mr. Robson appeals the decision of Director Juhlin requiring the private religious accessory structure to be converted back to a shed.

There are no provisions in the Sedona LDC which would prevent a residential property owner from using an accessory building as a private contemplative religious space. Section 902.01(A) of the Sedona Land Development Code allows the following with regard to accessory uses:

A. Accessory uses, including facilities and equipment are permitted in conjunction with any principal use, provided the accessory use is compatible with the principle use and does not alter the character of the premises. Any reference to a permitted use shall include the accessory use.

The use of the enclosed shed as a private contemplative religious space, with no retail items for sale or commercial operations being conducted within, would be compatible with the principle residential use and would not alter the character of the premises. Thus, Mr. Robson requests a determination from the Board of Adjustment finding that Director Juhlin erred in requiring Mr. Robson to convert the private accessory religious space within the permitted building back to a shed.

2. APPEAL OF CORRECTION ACTION C.1: The Community Development Director erred in issuing a notice of violation to the owner of 1535 SR 179 for unlawful overflow parking by customers and third parties after owner took necessary steps to post the vacant lot with "No Parking" signs.

According to the 2015 NOV issued by Director Juhlin, the Robsons and Son Silver West are in violation of Article 6 (District Regulations RS-18b) and Article 12 (Non-Conforming Situations) of the SLD by allowing over-flow parking and receiving and storage of merchandise on Vacant Tract 40. The Robsons and Son Silver West appeal this alleged violation inasmuch as they have ceased to allow over-flow parking and receiving and storage of merchandise on the vacant lot. The Robsons have posted "No-Parking" signs on Vacant Tract 40. They are unable to erect a wall or fence further restricting vehicular access to and from Vacant Tract 40 and the Son Silver West commercial driveway because there is an existing easement of record which grants the owner of Tract 39 vehicular access across the Robson's Vacant Tract 40 for purposes of ensuring Tract 39's access to SR 179.⁷³ When the SR 179 improvements were constructed, no driveway cut was allowed for Tract 39. Therefore, the only access to and from Tract 39 to SR 179 is located along its shared property line with Vacant Tract 40, which said access road then turns north through the Robson's Vacant Tract 40 to connect to the Son Silver West paved commercial driveway which intersects with SR 179. Thus, the Robsons and Son Silver West request a determination from the Board of Adjustment finding the Robsons to be in compliance with

⁷³ See Easement recorded against Vacant Tract 40 at Docket 250, Page 114, Official Records of Coconino County Recorder attached hereto as **Exhibit "E"**.

Article 6 and Article 12 and that the “No-Parking” signs currently erected on Vacant Tract 40 are an adequate measure to discourage parking on this vacant lot.

3. **APPEAL OF CORRECTIVE ACTION C.2: The Community Development Director erred in issuing a Notice of Violation to the owner of 1535 SR 179 requiring that the owner cease and desist all use of the vacant lot for commercial purposes when the City of Sedona Community Development Department previously approved the relocation and construction of a commercial driveway on 1535 SR 179 to allow ingress and egress traffic to travel to and from Son Silver West Tracts 42 and 41 and SR 179.**

Under Corrective Action C.2 of the 2015 NOV, Director Juhlin requires that the Robsons and Son Silver West immediately “cease and desist all use of this property [Vacant Tract 40] for commercial purposes including but not limited to shipping/receiving activities and storage of merchandise.” The Robsons and Son Silver West do not dispute the prohibition of the specified commercial uses on Vacant Tract 40 (i.e. shipping/receiving activities and storage of merchandise). On the other hand, they must appeal the requirement that they cease and desist all use of Vacant Tract 40 for commercial purposes because the driveway located upon and along the north boundary of Vacant Tract 40 is used as the main commercial driveway allowing vehicular access to and from the Son Silver West Property and SR 179. The location of this commercial driveway on Vacant Tract 40 was previously approved by Director O’Brien and ADOT for traffic safety purposes. On August 23, 2004 and September 4, 2004, Steve O’Brien of ADOT, the Robsons and Sedona Community Development Director John O’Brien reached an agreement whereby a new driveway connecting the Son Silver West parking lot to Highway 179 would be located and paved partly on Vacant Tract 40 to accommodate a full and safe median break to serve Son Silver West.⁷⁴ The new driveway and median break would allow circulation of large delivery trucks to the site and would eliminate any backing of large trucks onto SR 179. Given this prior approval, the Robsons and Son Silver West request a determination of the Board of Adjustment allowing the continued use of the commercial driveway on Vacant Tract 40.

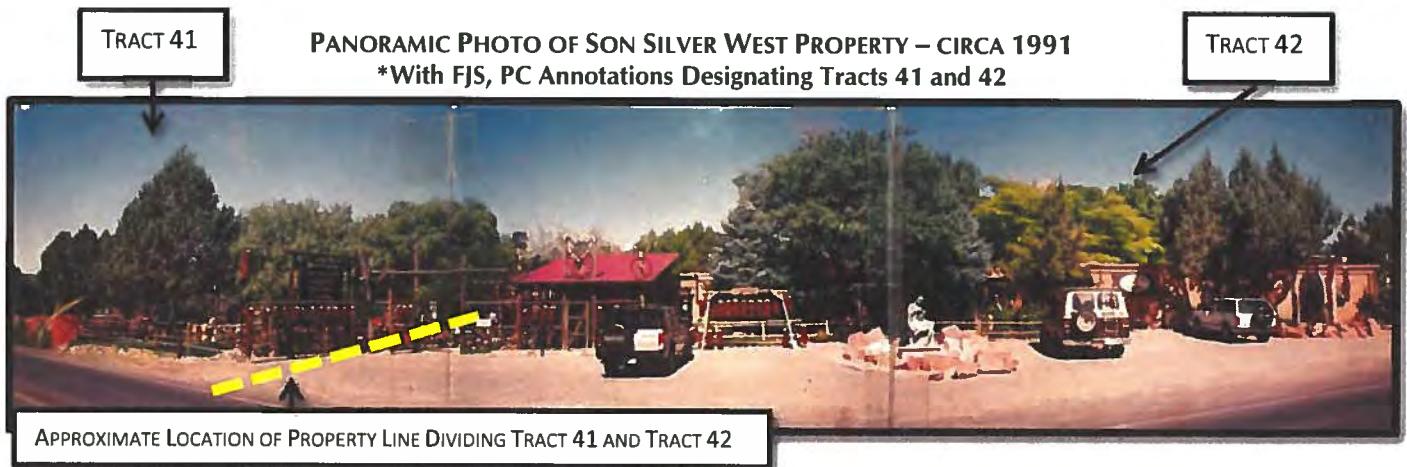
4. **APPEAL OF CORRECTIVE ACTION D.1: The existing outdoor retail display areas on the Son Silver West Property are permitted as a result of: (1) the legal non-conforming outdoor retail display areas historically located on Tract 42, (2) the Planning and Zoning Commission’s approval of the 1992 CUP and Alternative Site Plan # 2 allowing the expansion of an additional 5,000 square feet of outdoor retail display area on Tract 41, and (3) the 1993 Site Plan Approval which allowed the relocation of part of the outdoor retail**

⁷⁴ See ADOT Meeting Notes dated August 23, 2004 and Record of Conversation dated September 8, 2004, attached to SSW Memorandum as Exhibit “16”.

display area from Tract 41 to the former parking area along the frontage of Tract 42.

The Robsons and Son Silver West appeal Director Juhlin's interpretation of the 1992 CUP and the Director's decision set forth in the 2015 NOV requiring the removal of all outdoor retail display area in excess of the approved 5,000 square feet for the Son Silver West Property. The approved site plans, historical photographs and the 1992 Staff Report on file with the City of Sedona support a Board of Adjustment determination that the CUP issued to Son Silver West permitted the 5,000 s.f. expansion of the outdoor retail display area on Tract 41 and did not address the existing outdoor retail display areas which had been maintained as a legal non-conforming use on Tract 42 since 1960. Thus, the CUP did not limit the entire Son Silver West Property to 5,000 s.f. of outdoor retail display area. It limited the expansion of the existing outdoor display area on Tract 41 by 5,000 s.f. Our conclusion is supported by the following:

- Before the CUP approval in 1992, the Son Silver West outdoor retail display area was located on both Tract 41 and Tract 42, as shown by a historical panoramic photograph of the Son Silver West Property taken prior to the permitted relocation and reconfiguration of the parking area from Tract 42 to Tract 41 (circa 1991). As shown on the left side of the photograph, some of the outdoor retail display area was located along SR 179 on a grassy area of Tract 41. Outdoor retail display areas are also shown between the gallery building and former parking area on Tract 42.

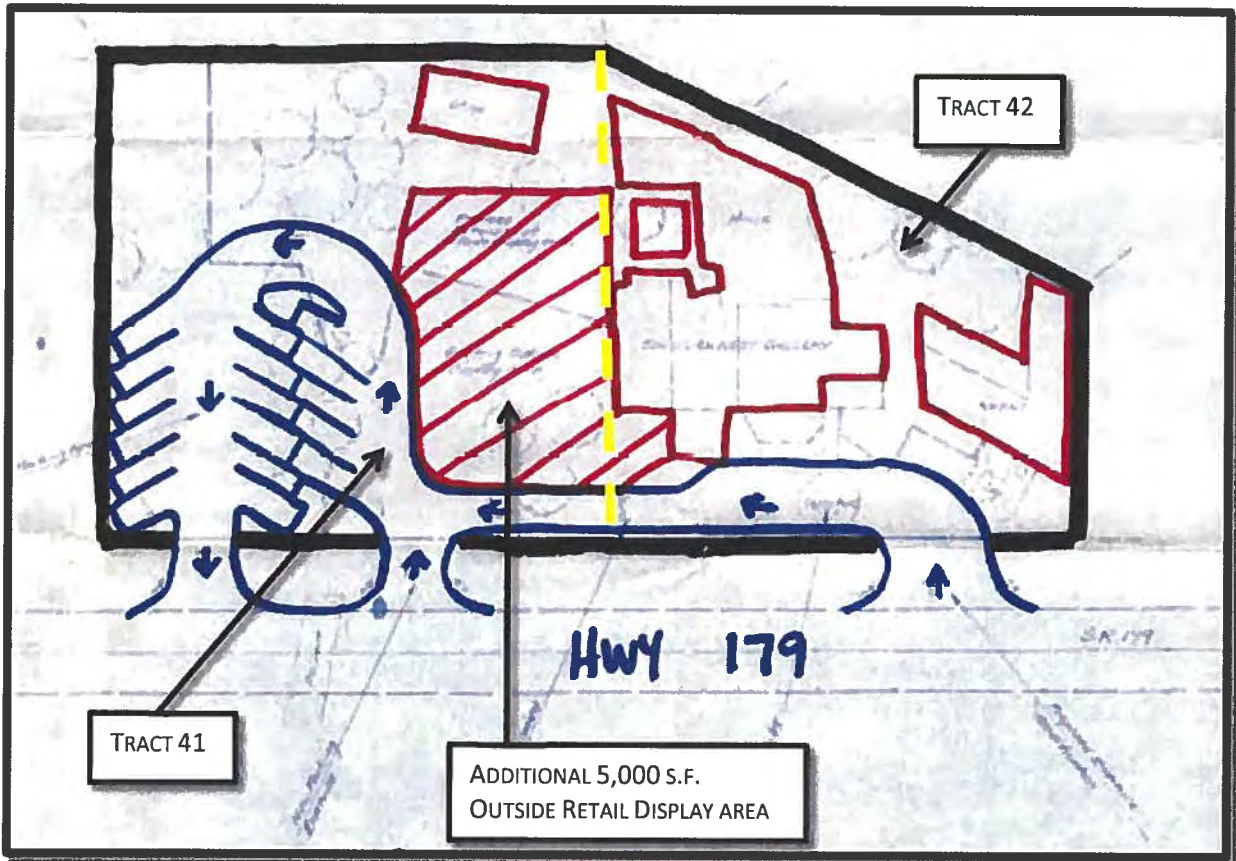


- The 1992 Plan and Alternative Site Plan #2 showed the extent of the existing and future proposed outdoor display area measuring approximately 60 feet by 90 feet located in the north-half of Tract 41 and lying south of the gallery, which would be left untouched after the new parking improvements were constructed. Neither the 1992 Plan nor the Alternative Site Plan #2 show the outdoor display areas that would be removed from the Tract 41 frontage as a result of the reconfiguration of the parking area and accessway. These plans also did not identify the existing outdoor display areas on Tract 42. Notably, the outdoor display area shown in the

panoramic photograph located between the east side of the gallery building and former parking area on Tract 42 is not depicted. This is expected inasmuch as the site plan is titled "Parking Lot Expansion Plan and Access Modifications." The plan was limited in terms of identifying only those areas of the Son Silver West Property impacted by the proposed parking and access modifications.

ALTERNATIVE SITE PLAN #2 APPROVED WITH CUP 92-3 ON SEPTEMBER 15, 1992

***With FJS, PC Annotations Designating Tracts 41 and 42 & Additional 5,000 S.F. of Outdoor Retail Display**



The location of the additional 5,000 s.f. of outdoor retail display area to be expanded onto Tract 41 is shown on Alternative Site Plan #2 with diagonal red lines. This expanded outdoor retail display area measures approximately 60 feet by 90 feet in width, according to the scaled drawing. The 1992 Plan and the Alternative Site Plan #2 do not identify the locations of the outdoor retail display areas which were then existing on Tract 42.

- The staff report dated September 15, 1992 emphasizes that the CUP addresses the outdoor display areas on the "southern one-half" of the Son Silver West Property.⁷⁵ The Summary Sheet for CUP 92-3 provides a parcel map with both Tracts 41 and 42

⁷⁵ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached hereto as **Exhibit "3"**.

delineated and identifies the former APNs for both Tracts 41 and 42 as being the location of the property. Thus, the “southern one-half” of the property which was the subject matter of the legal non-conforming use expansion and CUP application could only have been Tract 41. Specifically, the staff report states the following in support of our conclusion that the 5,000 s.f. outdoor retail display area was a limitation on the legal non-conforming use expansion onto Tract 41 only:

The City of Sedona and the current property owners disagree about the legal establishment of the large outside display area associated with the business as well as other associated uses on the southern one-half portion of the subject property.

...

Alternative site plan #1 showsAlternative site plan #2 shows a 30-foot wide one-way drive, with no parking in front of the building. This drive would access the new 17 space lot on the southern one-fourth of the property. The new parking lot would also be accessed the same as site plan #1. Both plans discuss expansion and shifting of the existing outside display area.

...

Development Proposal

- Conditional use permit requested to allow for expansion of nonconforming use
- If approved, would allow for continued use of 5,000 square foot outside sales/display area with minor modifications, and construction of 17-space parking lot on southern one-fourth of property.

...

Recommendation

The current use of the southern one-half of the subject property, specifically the 5,000 square foot outside sales/display area has been the subject of City zoning enforcement actions for approximately three years.

...

The applicant is pursuing an avenue of administrative relief (CUP request) which, if approved, would allow for the continued use of the disputed display area and the construction of a new parking area.

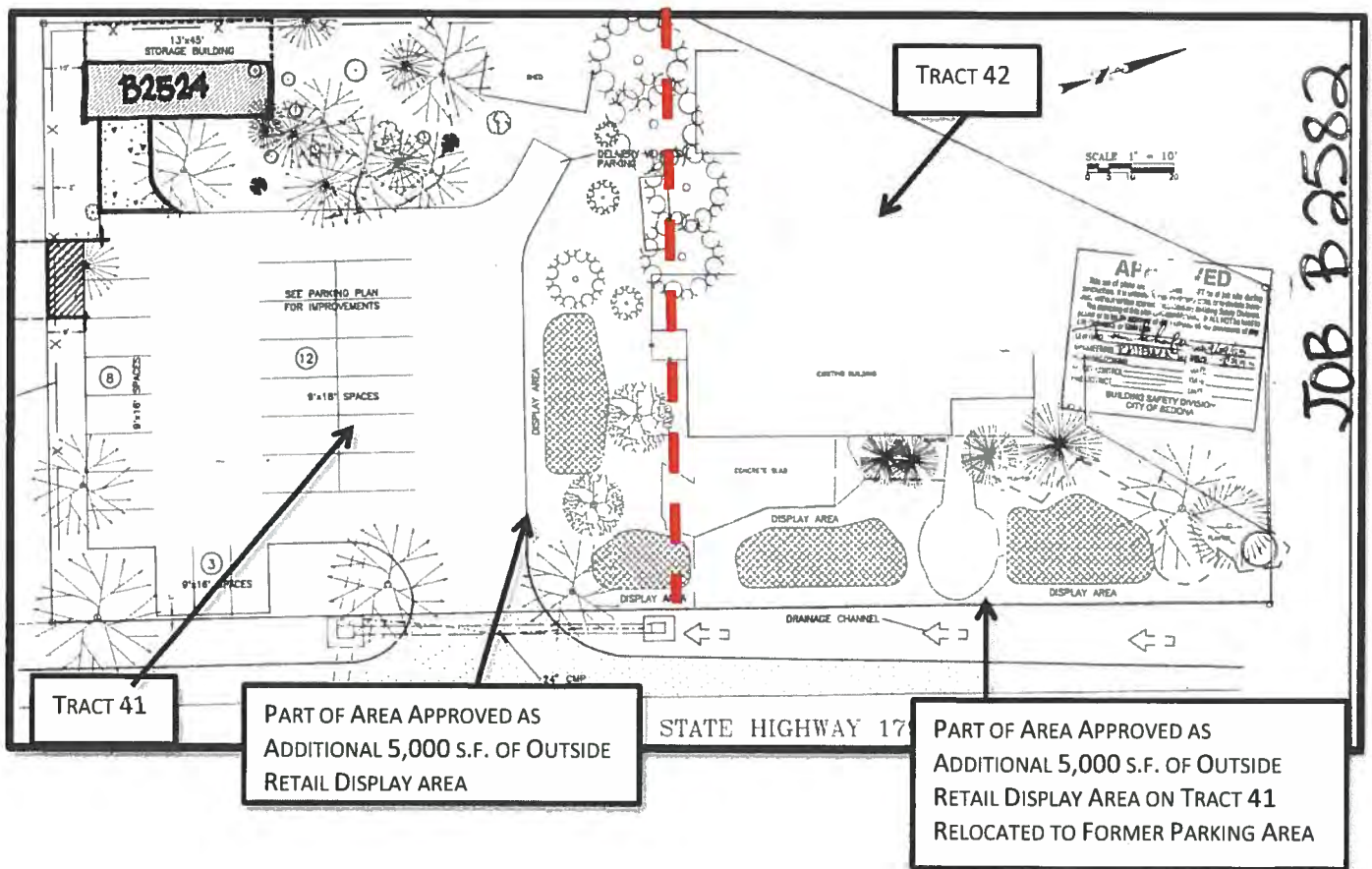
Emphasis added.

- On September 29, 1993, former Community Development Director, Tom Schafer, approved the 1993 Plan.⁷⁶ The 1993 Plan shows an approximate 30-foot by 90-foot outdoor retail display area lying along the north side of Tract 41 and south of the gallery building that was existing at the time of the CUP

⁷⁶ See 1993 Plan attached to SSW Memorandum as **Exhibit “11”**.

approval in 1992. Based upon the approximate 60-foot width of the outdoor display area shown on the prior 1992 Plan and Alternative Site Plan #2, it is obvious that the display area existing along the north side of Tract 41 at the time of the CUP approval was reduced by almost half in order to accommodate the new parking area on Tract 41. Not by coincidence, the 1993 Plan also shows outdoor retail "display areas" within the entire north-south area lying between the existing Tract 42 gallery and retail buildings on the west and the drainage channel abutting Highway 179 on the east. This additional outdoor display area shown on Tract 42 along Highway 179 on the 1993 Plan was relocated from the 5,000 s.f. outdoor display area approved along the north side of Tract 41 by the CUP. Thus, in 1993, Director Schafer approved these outdoor retail display areas as they currently exist today. Again, it is clear that the 5,000 s.f. of outdoor retail display was approved for expansion of the legal non-conforming use onto Lot 41. There is no evidence to support Director Juhlin's interpretation that the 5,000 s.f. of outdoor retail space applied to any area except Tract 41.

1993 PLAN APPROVED BY FORMER COMMUNITY DEVELOPMENT DIRECTOR SCHAFER
***With FJS, PC Annotations Designating Tracts 41 and 42 and Outside Retail Display Areas**



In summary, based upon the history of the outside retail display areas that were located throughout Tract 42 when the Property was originally operating as the La Galleria in Coconino County and later as Son Silver West at the time of Sedona's incorporation in 1988, the outside display areas on Tract 42 were already permitted as a legal non-conforming use. It was not until the Robsons purchased Tract 41 in 1987 that the City of Sedona began issuing notices of violation for an alleged expansion of the outside retail display areas onto Tract 41. With this background, the 1992 Staff Report's references to the 5,000 s.f. expansion of the outdoor retail display areas onto the south half of the property is placed in context. The Robsons and Son Silver West were limited to 5,000 square feet of additional outdoor display area on Tract 41 only. The remaining outdoor display areas on Tract 42 are grandfathered. Therefore, we request a ruling by the Board of Adjustment reversing the erroneous decision of Director Juhlin requiring the total outdoor retail display area to be limited to 5,000 square feet on the Son Silver West Property.

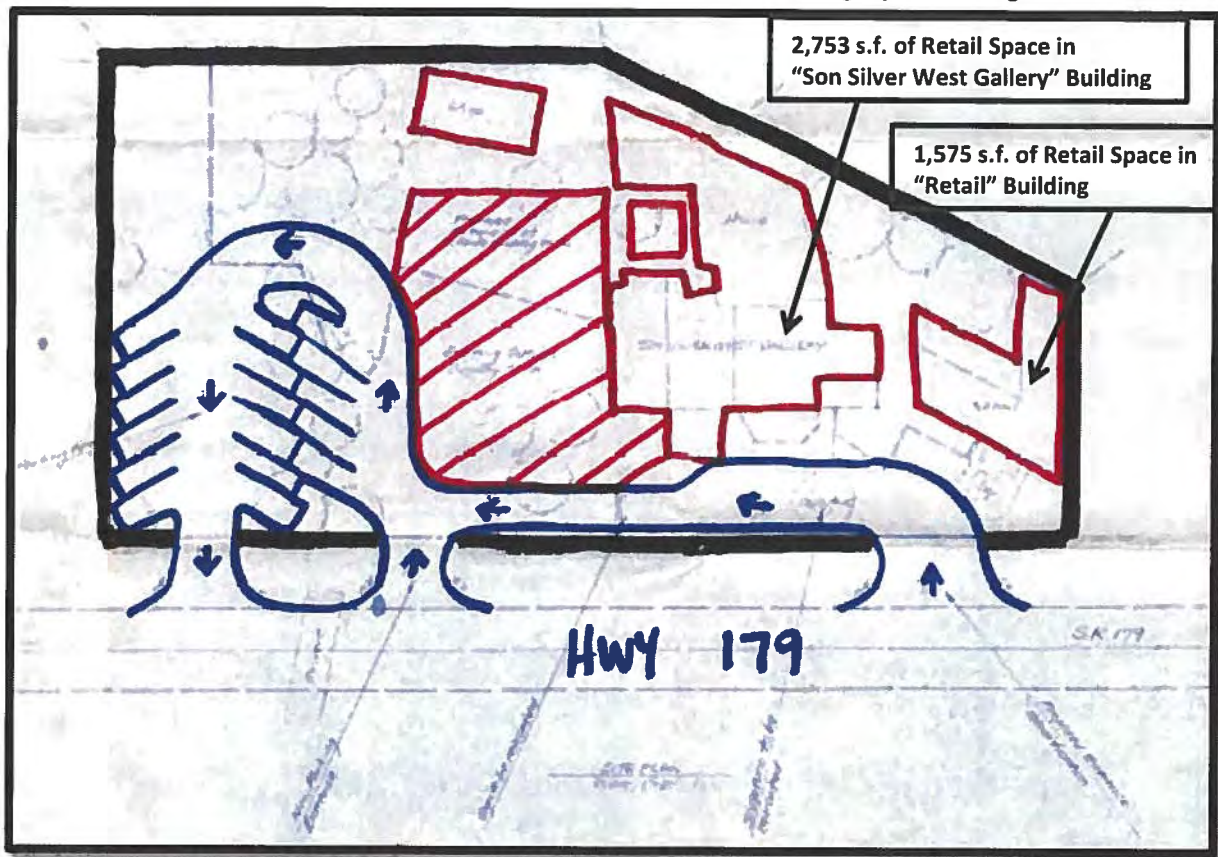
5. **APPEAL OF CORRECTIVE ACTION D.2: The Son Silver West retail space in enclosed buildings is permitted up to approximately 4,328 s.f. as depicted on the survey map prepared by Shephard Wesnitzer, Inc. and approved by the Planning and Zoning Commission as part of the 1992 CUP Condition No. 1 as "Alternative Site Plan #2".**

The City Planning and Zoning Commission's approval and adoption of the uses and physical structures depicted on Alternate Site Plan #2, as set forth in Condition No. 1 to the 1992 CUP, constitutes an official City approval which allows enclosed retail display areas totaling 4,328 square feet on the Son Silver West Property. Condition No. 1 to the 1992 CUP states, **"Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2)."**⁷⁷ Emphasis added. Alternate Site Plan #2 was approved by the Planning and Zoning Commission using the full-sized, drawn-to-scale (1 inch=20 feet) Shephard-Wesnitzer plan titled "Parking Lot Expansion Plan and Access Modifications" dated April 4, 1992, Job No. 91038.⁷⁸ By using an engineer's 20-scale to calculate the building areas labeled as "Son Silver West Gallery" and "Retail" on the Alternate Site Plan #2, the Robson's architect has confirmed a total allowable building area of 4,328 square feet dedicated to retail space. For demonstrative purposes, we have provided the retail square footages scaled take-off of Alternative Site Plan #2 below:

⁷⁷ See 1992 Staff Report attached to SSW Memorandum as **Exhibit "3"**.

⁷⁸ See 1992 Plan and Alternate Site Plan #2 attached to SSW Memorandum as **Exhibit "10"**.

ALTERNATIVE SITE PLAN #2 APPROVED WITH CUP 92-3 ON SEPTEMBER 15, 1992
*With FJS, PC Annotations Designating Scaled, Retail Building Square Footages



Based upon this survey of the existing buildings, which was later adopted by the Planning and Zoning Commission as Alternative Site Plan #2, there is a significant discrepancy between the retail space adopted by the Planning and Zoning Commission on the Plan and the square footages referenced in the 1992 Staff Report. Clearly, Alternative Site Plan #2 provides the most accurate depiction of the legal non-conforming retail space in enclosed buildings at the time of the 1992 CUP approval. Therefore, we would request determinations by the Board of Adjustment finding: (1) the Planning and Zoning Commission's approval of Alternative Site Plan #2 as part of the 1992 CUP allowed an existing 4,328 s.f. of enclosed retail space on Tract 42 and (2) Director Juhlin's decision in the 2015 NOV limiting the enclosed retail space to 2,250 s.f. to be in error and reversed.

6. APPEAL OF CORRECTIVE ACTION D.2: The southernmost building on Tract 41, referred to as "Building A" by Director Juhlin in the 2015 NOV, was approved by the City for storage in connection with the existing Son Silver West commercial operations.

The Robsons and Son Silver West appeal Director Juhlin's decision in the 2015 NOV relating to the use of the southernmost building on Tract 41, referred to as "Building

A" by Director Juhlin. The purpose of this appeal is to seek clarification that this building may be used for commercial storage purposes. Neither the 1993 Plan nor the permit records for this building limit its use to residential storage. Therefore, we would request a Board of Adjustment determination that Son Silver West may use the southernmost building on Tract 41 as a storage building in connection with its commercial business.

7. APPEAL OF CORRECTIVE ACTION D.2: The northernmost building on Tract 41, referred to as "Building B" by Director Juhlin in the 2015 NOV, was approved as an art workshop to be used in connection with the existing Son Silver West commercial operations.

The Robsons and Son Silver West appeal Director Juhlin's decision in the 2015 NOV requiring the northernmost building on Tract 41 to be returned to a storage shed. The Alternative Site Plan #2 approved by the Planning and Zoning Commission as part of the 1992 CUP designates the use of this building as "shop."⁷⁹ The City's permit records for this structure approved its use as a "new commercial structure" and "shop."⁸⁰ Therefore, we would request a determination by the Board finding the approved use of that northernmost building on Tract 41 is for a commercial art workshop and not a storage shed as set forth in the 2015 NOV.

8. APPEAL OF CORRECTIVE ACTION D.3: The single-family residence depicted on Alternative Site Plan #2 as "House" was approved as an administrative office and employee lounge by Director O'Brien's December 21, 2011 Decision.

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV which requires the Robsons to restore 1,950 square feet of the primary dwelling unit to single-family residential use. Former Director O'Brien performed an inspection of the former residence on November 2, 2012.⁸¹ At that time, the former residence was being used as administrative office space and an employee lounge complete with a full kitchen, bathroom, and meeting area. The administrative office and employee lounge space remains locked at all times and is not open to the public. Inasmuch as the retail space under roof was not being expanded by the conversion of the residence to office and employee lounge space, Director O'Brien approved the existing use during his inspection with Rio Robson and in his December 21, 2011 Decision. Director O'Brien was authorized as the Zoning Administrator to interpret compliance with the 1992 CUP given that the existing administrative office and employee lounges uses complied with the intent of the 1992 CUP to limit further non-conforming uses which would generate additional traffic and intensity to the Son Silver West Property.

⁷⁹ See Alternative Site Plan # 2 attached to SSW Memorandum as **Exhibit "10."**

⁸⁰ See Permit Records for art workshop building attached hereto as **Exhibit "J."**

⁸¹ See November 4, 2011 Email from Director O'Brien to Rio Robson attached to SSW Memorandum as **Exhibit "27"**.

9. APPEAL OF CORRECTIVE ACTION D.4: The existing wrought-iron fence lying along the frontage of Tract 42 was approved by Director O'Brien and issued a fence permit in accordance with Condition 6 to the 1992 CUP.

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring additional screening to be incorporated along the Son Silver West Property frontage along SR 179. As cited by Director Juhlin, Condition No. 6 to the 1992 CUP states that the "outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development."⁸² Emphasis added. Following the 1992 CUP approval, on June 7, 1994, former Community Development Director Tom Schafer and the Robsons entered into an agreement with regard to the Robson's future compliance with CUP Condition No. 6 as follows:

Condition No. 6 – The Robsons agreed that earthen berms and screen landscaping would be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994 and October 1, 1994, respectively. A combination of earthen berming, landscaping and rustic fencing was also required in order to satisfy any additional visual screening requirements of all outside display areas as approved by the Director no later than October 1, 1994.

On February 22, 1995, John O'Brien, who at the time was an Associate Planner with the City of Sedona, sent a letter to Bill Robson which provided confirmation that all required improvements required under the 1992 CUP for the Son Silver West Property had been completed, including the screening requirement of Condition No. 6, with the exception of: (1) elimination of the existing mercury vapor lighting [Condition 8], (2) installation of additional parking lot lighting [Condition 9], and (3) construction of the SR 179 improvements [Conditions 4]. Therefore, as of February 22, 1995, the Robsons had complied with screening requirements along the Son Silver West Frontage.

The existing wrought-iron decorative fence erected along the Son Silver West Property frontage also met the satisfaction of Director O'Brien. This is evidenced by the City's permit approval for the wrought-iron fence issued on September 8, 2011.⁸³ Director Juhlin has no authority to now decide that the existing, permitted fence does not meet her satisfaction. The Robsons and Son Silver West request a Board of Adjustment determination reversing the Decision of Director Juhlin and finding the wrought-iron fence permit to be sufficient evidence of Compliance with Condition No. 6 of the 1992 CUP.

⁸² See 2015 NOV attached hereto as **Exhibit "C"**.

⁸³ See Wrought-Iron Fence Permit Approval attached to SSW Memorandum as **Exhibit "23."**

10. APPEAL OF CORRECTIVE ACTION D.5: The existing light fixtures on Tracts 42 and 41 were approved by Director O'Brien in accordance with Condition 9 to the 1992 CUP.

The Robsons and Son Silver West also appeal the decision of Director Juhlin in the 2015 NOV requiring the existing light fixtures to be shielded in compliance with Condition No. 9 of the 1992 CUP and the Sedona LDC. Condition No. 9 required that "[a]ll other exterior outside lighting shall be shielded to the specifications of the Director of Community Development." Emphasis added. After entering into the Agreement with former Director Schafer on June 7, 1994, the Robsons agreed to install parking lot lighting no later than August 1, 1994. It was agreed that all lighting would be shielded to the satisfaction of the Community Development Department Director no later than August 15, 1994. The lighting installed in the parking lot area on the Son Silver West Property met the satisfaction of former Director O'Brien and was not listed as an outstanding violation in the December 21, 2011 Decision. Therefore, we request a determination by the Board of Adjustment reversing Director Juhlin's decision requiring the existing light fixtures to be shielded.

11. APPEAL OF CORRECTIVE ACTION D.6: The existing shade structures on Tracts 42 and 41 were approved by the December 21, 2011 Decision by Director O'Brien.

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring the submittal of building permit applications for the shade structures erected or expanded on the Son Silver West Property without prior approvals. All of the existing shade structures on the Son Silver West Property have either been in existence prior to the incorporation of the City of Sedona and therefore enjoy legal non-conforming status, have been approved by the City of Sedona through the issuance of a building permit, or were approved as part of the December 21, 2011 Decision. The December 21, 2011 Decision culminated as a result of Director O'Brien's August 31, 2011 notice of violation which questioned 2 shade structures on the Son Silver West Property. After researching the City's records and performing an inspection of the property on November 2, 2011, Director O'Brien made his December 21, 2011 Decision determining that the 2 shade structures were permitted as follows:

2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building. You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.⁸⁴

⁸⁴ See December 21, 2011 Decision by Director O'Brien attached to SSW Memorandum as **Exhibit "28"**.

Director O'Brien mentioned no other shade structure violations in his December 21, 2011 Decision. The Robsons have erected no additional shade structures since the December 21, 2011 Decision. Therefore, we would request a determination by the Board of Adjustment reversing Director Juhlin's decision requiring building permit applications for existing shade structures on the Son Silver West Property.

12. APPEAL OF CORRECTIVE ACTION D.6: The 1992 CUP approval, Conditions of Approval, and Alternative Site Plan #2 do not limit the square footage of shade structures erected in outdoor retail display areas on the Son Silver West Property.

Inasmuch as the 1992 CUP Conditions, the 1992 Staff Report, and the Alternative Site Plan #2 approved by the Planning and Zoning Commission failed to address or provide requirements for the existing shade structures on the Son Silver West Property, the Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring the Robsons to submit building permit applications for the shade structures.

13. APPEAL OF CORRECTIVE ACTION D.7: The existing 6-foot tall solid wood fence and the 6-foot tall masonry wall lying along the backside or west property line of Son Silver West Tract 41 and 42 do not require the issuance of a permit under the City of Sedona Building Code.

Son Silver West and the Robsons appeal the decision of Director Juhlin in the 2015 NOV requiring building permits to be obtained for the existing masonry wall and wooden fence lying along the west property line of the Son Silver West Property. As to the wall which was relocated by the Robsons onto the Arrow Property to the north of the Chapel, the Robsons will be applying for a building permit to replace that wall with a new fence along the shared property line between the Arrow Property and the Son Silver West Property. As to all other existing masonry walls and wood fences located along the west property line of the Son Silver West Property, these walls remain a legal non-conforming use and were inspected by former John O'Brien during his November 2, 2011 inspection. No rear wall or fence violation was issued by Director O'Brien in his December 21, 2011 Decision or in his communications leading up to the Decision. Thus, we request that the Board of Adjustment issue a ruling finding Director Juhlin's requirement that the Robsons obtain a building permit for the wall/fence along the backside of the property to be erroneous.

C. CHILIES

1. The preparation, roasting, display and vending of chilies on the Son Silver West Property are permitted as a legal non-conforming use.

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring them to cease the preparation, roasting, display and vending of produce, including but not limited to chilies.⁸⁵ The sale of chilies has been conducted on the property since the days of the La Galleria, prior to the Robson's purchase of Tract 42 in 1981 and prior to the City's incorporation. A letter from the prior owner of Tract 42, Ms. Ernestine Todd, dated February 2, 1990, was submitted to prior Sedona Community Development Director, Tom Schafer, stating that, during her ownership of the La Galleria, she conducted "the outdoor display of pottery, chimes, chilies and southwestern art-and-craft items."⁸⁶

The City's approval of the 1991 chili cage plans for repair of the existing roof and structure also demonstrate that the Robsons have conducted the display and vending of chilies on the Son Silver West Property since at least 1991.⁸⁷ The City's chili cage permit records include pictures of the strings of chilies being displayed in the outdoor retail display area for sale to the public.⁸⁸ This prior decision of approval by the City directly contradicts the 2015 NOV requiring Son Silver West and the Robsons to immediately cease all preparation, roasting, display and vending of chilies on the Son Silver West Property. As mentioned above, the Robsons have been selling chilies at their gallery for more than 30 years. We would request that the Board of Adjustment find the chili cage plan and permit approval records to be satisfactory evidence and that the Robsons have the vested right in reliance upon such permit to continue the legal non-conforming use of preparing, roasting, displaying and vending chilies on the Son Silver West Property.

D. BUSINESS LICENSE

1. The revocation of Son Silver West's Business License in accordance with Section 5.05.040(A) in the Sedona City Code is unlawful when imposed as a result of an interpretation of non-compliance with the Sedona Land Development Code.

The Robsons and Son Silver West hereby appeal to the Board of Adjustment the interpretation and application by Director Juhlin, within the 2015 NOV, of the license

⁸⁵ See 2015 NOV attached hereto as **Exhibit "C"**.

⁸⁶ See Letter from E. Todd attached to SSW Memorandum as **Exhibit "4"**.

⁸⁷ See Chili Cage approved plan attached to SSW Memorandum as **Exhibit "5"**; See also Chili Cage permit records recently supplied by the City of Sedona on November 24, 2015 and attached hereto as **Exhibit "D"**.

⁸⁸ See **Exhibit "D"** attached hereto.

revocation procedures pursuant to Sedona City Code Section 5.05.040(A) to potentially revoke the business license of Son Silver West as a result of the alleged pending zoning and building code violations. Section 5.05.040(A) of the City Code allows the City or its designee to suspend, revoke or deem to be invalid a business license for the alleged violation of the Sedona City Code, the Sedona Land Development Code or the Arizona Revised Statutes. Yet, due process considerations would prevent the revocation of a business license when a property owner has filed an administrative appeal of the alleged violations with the City.

E. UNLAWFUL REVOCATION OF 1992 CUP FOR VIOLATIONS ON PROPERTIES SEPARATE AND APART FROM SON SILVER WEST PROPERTY GOVERNED BY 1992 CUP

- 1. A conditional use permit approval issued for Son Silver West Tracts 42 and 41 may not be revoked as a result of alleged violations of the Sedona Land Development Code on Tracts 40, 45 and 49, when Tracts 40, 45 and 49 were not a part of the conditional use permit approval.**

The Robsons appeal the interpretation and decision of Director Juhlin in the 2015 NOV that the Planning Commission may, pursuant to Section 402.10 of the Sedona LDC, revoke the 1992 CUP for the Son Silver West Property as a result of outstanding violations for adjoining residential properties owned by the Robsons but not included within or subject to the 1992 CUP approval. The revocation provisions applicable to the Son Silver West Property state:

E. If a use permit is granted subject to conditions, upon failure to comply with conditions, a conditional use permit shall be suspended automatically, may invoke enforcement per Article 14 SLDC, or may be revoked . . .

The Arrow Property, Bowstring Property and the Vacant Tract 40 are not subject to the 1992 CUP approval of the conditions granted thereunder. Therefore, the Robsons non-compliance with any violations asserted by Director Juhlin within the 2015 NOV which apply to those 3 properties cannot result in the revocation of the 1992 CUP approved solely for the Son Silver West Property. As such, the Robsons request a determination by the Board of Adjustment finding that alleged violations on the Arrow Property, Bowstring Property and the Vacant Tract 40 cannot form the basis for revocation of the 1992 CUP under Section 402.10 of the Sedona LDC.

F. VESTED RIGHTS OF SON SILVER WEST

- 1. Director Juhlin erred by making the determination in the 2015 NOV and Director's 2015 Memorandum that documentation submitted by Son Silver West to Director Juhlin in the September 22, 2015 Memorandum and records on file at the City of Sedona do not provide sufficient evidence of prior City approvals which would allow certain existing conditions on the Son Silver West Property to continue.**

The Robsons and Son Silver West respectfully submit this appeal of the interpretation and decision by Director Juhlin in the 2015 NOV that, after reviewing the documentation submitted with the SSW Memorandum, "staff found no evidence that provided any formal approval allowing for the existing conditions and expansion above that which was approved as part of the 1992 CUP."⁸⁹ As set forth under each issue on appeal above, we request a Board of Adjustment determination finding that the Robsons and Son Silver West submitted evidence of City approvals allowing the existing conditions set forth in this appeal.

- 2. Certain existing uses and structures on the Son Silver West Property, which are being challenged by Director Juhlin as unlawful, are vested as a matter of law.**

The owners of Son Silver West enjoy vested rights with regard to: (1) the legal nonconforming use of the Son Silver West Property, (2) all legal non-conforming structures and outside retail display areas in existence on Tract 42 at the time of the CUP approval in 1992, (3) the construction of the southernmost building on Tract 41, (4) the current parking configuration on Tract 41, and (5) the existing outdoor retail space along the frontage of Tract 42 as well as the approximate 30-foot area along the north property line of Tract 41. The Robsons enjoy vested rights with regard to Item Nos. 1 and 2 as legal nonconforming use rights resulting from Sedona's incorporation in 1988 and the City Planning Commission's approval of the 1992 CUP. The uses and structures identified in Item Nos. 3, 4 and 5 are vested as a result of: (1) the September 29, 1993 Decision by Director Tom Schafer approving the Son Silver West site plan and parking plan (the "**1993 Plan**") as being in general conformance with the 1992 CUP, (2) the City's issuance of building permits related thereto, and (iii) the Robson's good faith reliance thereon as demonstrated by their substantial work and incurrence of substantial expenditures to complete the construction of those improvements.

The Arizona common law provides for delayed vesting of development rights. As a general rule, this involves the issuance by the municipality of a building permit or project-specific development approval and the good faith reliance thereon by the developer in the

⁸⁹ See 2015 NOV attached hereto as **Exhibit "C"**.

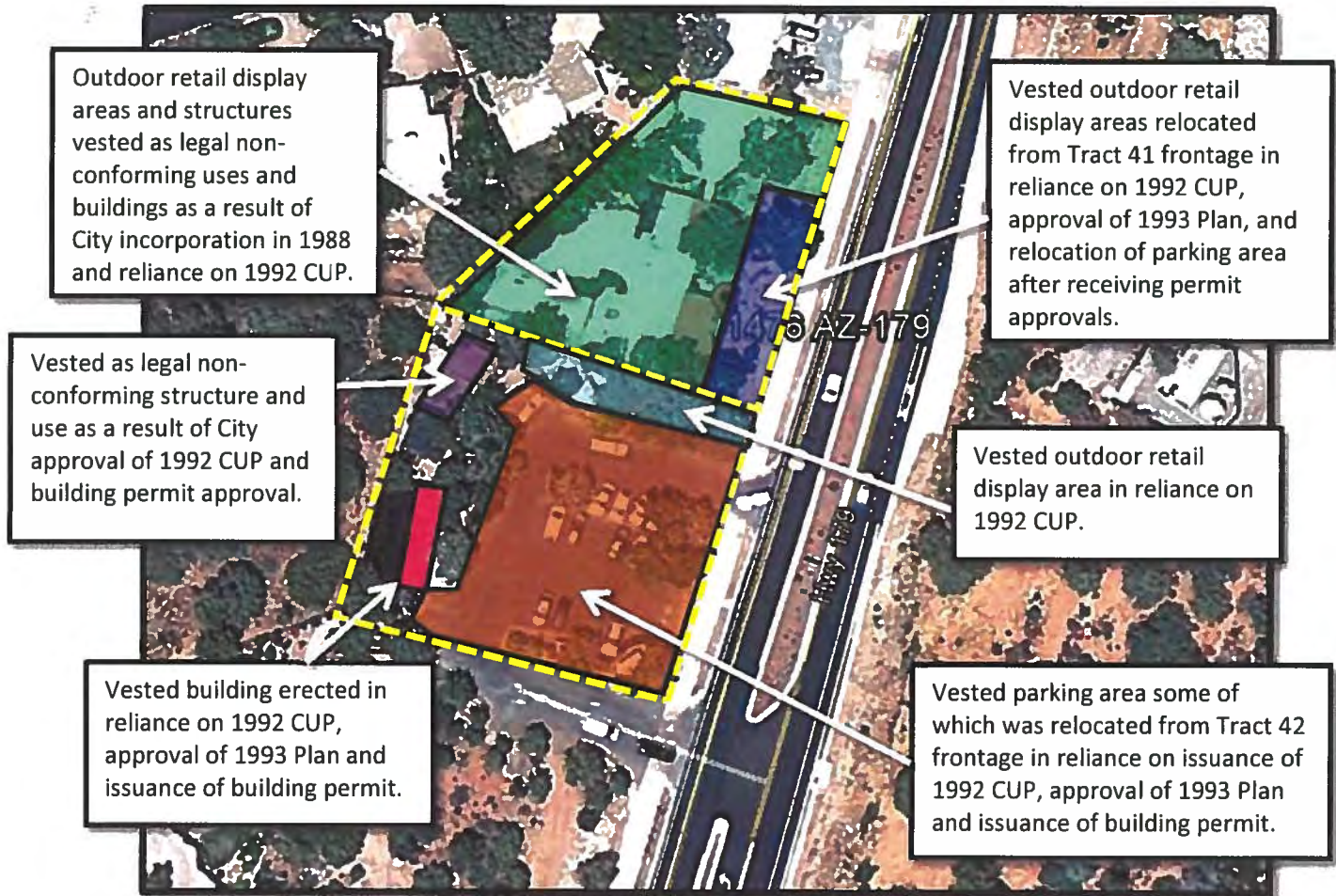
form of substantial work, incurrence of substantial expenditures and/or incurrence of substantial liability. Once a building permit is issued as duly authorized by law and the permittee has materially acted in reliance thereon, the right to continue under those rules is vested and municipality may not arbitrarily revoke or change the rules under which the permit was issued. *Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz.App. 600, 607, 557 P.2d 532 (App.1976). This common law rule is based upon the theory of equitable estoppel.

In the legal nonconforming use context, "a nonconforming land use is a vested property right and is 'defined as a lawful use maintained after the effective date of a zoning ordinance prohibiting such use.'" *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 182, 181 P.3d 219, 229 (App.2008). In this case, the Robsons, as owners of the Son Silver West Property and its legal non-conforming use, enjoy a vested right to preserve and maintain the development that existed on the Son Silver West Property prior to the incorporation of the City of Sedona in 1988 and as a result of the 1992 CUP approval, the 1993 Plan approval and building permits issued by the City in accordance with development regulations applicable to the property in existence on the effective date that vesting occurred. At the time of the 1992 CUP approval and the 1993 Plan and building permit approvals, the original Sedona Community Plan identified the Son Silver West Property with a General Commercial land use designation. Inasmuch as the 1992 CUP and permit approvals allowed the expansion of a commercial retail use in conformance with City's Community Plan at that time, the Robsons were justified in placing good faith reliance on these approvals.

As generally depicted on the aerial photograph below and the 1993 Plan attached hereto as **Exhibit 11**, the Robsons relocated and built a new expanded parking lot area on Tract 41, constructed the southernmost building on Tract 41 and relocated part of the 5,000 s.f. of outdoor retail display area granted under the 1992 CUP to the former parking lot area on Tract 42, all while justifiably relying on the: 1) the 1993 Plan approved by former Community Development Director Tom Schafer and 2) building permits issued for the southernmost building and the new parking area on Tract 41. Inasmuch as these substantial expenditures and improvements were made by the Robsons in good faith reliance on the City's approvals and permits issued, the Robsons possess vested property rights in the location and square footage of the buildings, parking area and outdoor retail display areas existing at the time of the City's incorporation in 1988 and as shown on the 1993 Plan.

VESTED RIGHTS OF SON SILVER WEST
JUNE 2011 GOOGLE PHOTOGRAPH OF SON SILVER WEST PROPERTY DEMONSTRATING
IMPROVEMENTS AND AREAS CONSTRUCTED IN RELIANCE ON 1993 PLAN AND PERMITS

*With annotations supplied by Francis J. Slavin, P.C.



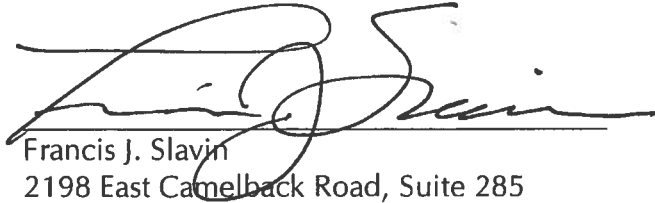
VII. CONCLUSION

Son Silver West Gallery respectfully requests a favorable determination by the Board of Adjustment upholding the authorized and official December 21, 2011 Decision of former Sedona Community Development Director John O' Brien, acting as the Zoning Administrator, which found the current uses, buildings, and structures on the Son Silver West Property to be in compliance with the 1992 CUP, Alternative Site Plan #2, plan and permit approvals issued by the City of Sedona to the Robsons, and the Sedona Land Development Code. Since the December 21, 2011 Decision, the Son Silver West Property has remained unchanged, and the Robsons have relied upon that Decision to substantially invest in their business and future at this location. To allow a different decision 4 years later by current Director Juhlin purportedly overturning a prior Director's determination of compliance and attempting to circumvent the Robson's vested rights in certain uses,

buildings and structures on the Son Silver West Property would be contrary to law and result in a serious injustice to the Robsons.

RESPECTFULLY SUBMITTED this 25th day of November, 2015.

FRANCIS J. SLAVIN, P.C.

A handwritten signature in black ink, appearing to read 'Francis J. Slavin', written over a horizontal line.

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Robson Design,
Rio Cody Robson,
William B. Robson and Linda Rose Robson, and
William B. Robson and Linda Rose Robson,
as Trustees of the William B. Robson Living Trust dated
July 12, 1999 and
as Trustees of the William B. Robson Living Trust dated
July 12, 1999*